

No. 10583

United States
Circuit Court of Appeals

For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

IDAHO REFINING COMPANY,
Respondent.

Transcript of Record
In Three Volumes
VOLUME I
Pages 1 to 497

Upon Petition for Enforcement of an Order of the National
Labor Relations Board

FILED

JAN 19 1944

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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XIX-C-1071 and 1082

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BOARD'S EXHIBIT No. 1-N

United States of America
Before the National Labor Relations Board
19th Region

Case No. XIX-C-1082

Date Filed 1-5, 1942

In the Matter of—

IDAHO REFINING COMPANY

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, LOCAL No. 198, AFFILIATED
WITH THE AFL.

CHARGE

Pursuant to Section 10.(b) of the National Labor Relations Act, the undersigned hereby charges that Idaho Refining Company at Pocatello, Idaho, employing 3 workers in Auto mechanic, repair trucks has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (3) of said Act, in that

1. On or about November 14, 1941, it, by its officers, agents and employees terminated the employment of Leo Archibald, machinist, because of his membership and activities in behalf of International Association of Machinists, Local No. 198, affiliated with the American Federation of Labor, a labor organization, and at all times since said date it has refused, and does now refuse, to employ Leo Archi-

bald in violation of Section 8, subdivision (3), of said Act.

2. By the acts set forth in the paragraph above, and by acts of interference, restraint and coercion, and by other acts and statements, it, by its officers, agents and employees interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of said Act in violation of Section 8, subdivision (1) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

INTERNATIONAL ASSOCIATION
OF MACHINISTS, LOCAL
No. 198, AFFILIATED
WITH THE AFL.

By ZENOS F. GEORGE,

Recording Secretary, 316 No.
9th Ave., Pocatello, Idaho.

Subscribed and sworn to before me this 31st day of Dec., 1941, at Pocatello, Idaho.

[Seal] L. E. GLENNON,
Notary Public.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge.

TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN and
HELPERS, LOCAL 983, A.
F. L.

By LEE W. OWEN,
Secretary-Treasurer, 140
South First Avenue,
Pocatello, Idaho.

Subscribed and sworn to before me this 10th day
of April, 1942, at Pocatello, Idaho.

WM. A. BABCOCK, JR.,
Attorney, N.L.R.B.

BOARD'S EXHIBIT No. 1-M

United States of America
Before the National Labor Relations Board
Nineteenth Region

Case No. XIX-C-1071

Date Filed November 29, 1941

Amended April 14, 1942

In the Matter of

IDAHO REFINING COMPANY

and

TEAMSTERS, CHAUFFEURS, WAREHOUSE-
MEN, AND HELPERS, LOCAL NO. 983,
A.F.L.

AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Idaho Refining Company, at Pocatello, Idaho, employing 95 workers in refining and marketing of gasoline and oil, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2), (3) and (5) of said Act, in that

On or about November 14, 1941 the company discharged from its employ the employees hereinafter named because of their membership and activities on behalf of Chauffeurs, Teamsters, and Helpers, Local Union No. 440, predecessor of the under-

signed union, and in order to avoid and defeat collective bargaining with said Local Union No. 440: James Ayers, S. R. Burkholder, K. C. Brower, G. C. Campbell, Edward Boyd Cornia, Howard L. Davis, Wayne Douglas, Victor Ellingford, John P. Evans, Leonard Fowler, Arthur L. Heckert, H. H. Henriksen, Carl E. Hill, A. Stanley Merrill, Robert W. Patterson, John Ray, Leland W. Stanford, Parley P. Stanger, R. E. Miller, Myron D. Whitesides. The company has at all times since said date failed and refused to reinstate said employees to their former positions as truck drivers, except that it has reemployed two of said employees, R. E. Miller and K. C. Brower as truck drivers. By such action said company has violated Section 8 (3) of said Act.

Since on and before November 14, 1941 the said Local Union No. 440, and the undersigned union, as successor of the said Local, have been designated as their collective bargaining representative by a majority of the employees of the company in a unit appropriate for the purposes of collective bargaining, namely: all truck drivers employed by the company, exclusive of the truck foreman. At all times since on or about November 14, 1941 the company has refused to recognize or bargain collectively with the said Local 440, and the undersigned union as successor of said local, for said employees with respect to rates of pay, wages, hours of work and other conditions of employment, and has thereby violated and is violating Section 8 (5) of said Act.

Said company did in June or July, 1938 dominate and interfere with the formation of a labor organization of its employees, known as the Idaho Refining Company Employees' Benefit and Labor Association, and has at all times since its formation dominated and interfered with the administration of said organization and contributed support and assistance to it. By said acts the company has violated and is violating Section 8 (2) of said Act.

Said company has at various times, and particularly since November 14, 1941 inquired of employees and prospective employees whether or not they were members of labor unions and has made non-membership in outside unions or withdrawal from said membership as a condition of employment, and has by other acts and statements discouraged membership in the undersigned and encouraged membership in the said association.

By all the above acts and statements and other acts and statements the company has interfered with, restrained and coerced and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed to them in Section 7 of said Act, and has violated and is violating Section 8 (1) of said Act.

BOARD'S EXHIBIT No. 1-L

United States of America
National Labor Relations Board

I, Beatrice M. Stern, Executive Secretary of the National Labor Relations Board, and official

custodian of its records, do hereby certify that attached is a full, true, and complete copy of: Order Consolidating Cases in the Matter of Idaho Refining Company and Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, A.F.L., Case No. XIX-C-1071; Idaho Refining Company and International Association of Machinists, Local No. 198, Affiliated With the AFL, Case No. XIX-C-1082.

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 29th day of June, A. D. 1942, at Washington, D. C.

[Seal]

BEATRICE M. STERN,
Executive Secretary.

United States of America
Before the National Labor Relations Board
Case No. XIX-C-1071

In the Matter of
IDAHO REFINING COMPANY
and
TEAMSTERS, CHAUFFEURS, WAREHOUSE-
MEN AND HELPERS, LOCAL No. 983,
A. F. L.

Case No. XIX-C-1082
IDAHO REFINING COMPANY
and
INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, LOCAL No. 198, AFFILIATED
WITH THE AFL.

ORDER CONSOLIDATING CASES

A charge and an amended charge, pursuant to Section 10 (b) of the Act, having been filed by Teamsters, Chauffeurs, Warehousemen and Helpers, Local 983, A. F. L., in Case No. XIX-C-1071, a charge having been duly filed by International Association of Machinists, Local No. 198, Affiliated with the AFL, in Case No. XIX-C-1082, and the Board having duly considered the matter, and deeming it necessary in order to effectuate the purposes of the National Labor Relations Act,

It Is Hereby Ordered, pursuant to Article II, Section 36 (b) of National Labor Relations Board Rules and Regulations—Series 2, as amended, that Cases Nos. XIX-C-1071 and XIX-C-1082 be, and they hereby are, consolidated.

Dated, Washington, D. C., June 6, 1942.

By direction of the Board:

[Seal] BEATRICE M. STERN,
Executive Secretary.

BOARD'S EXHIBIT No. 1-J

[Title of Board and Causes.]

CONSOLIDATED COMPLAINT

It having been charged in the above entitled matters by Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, A. F. L., and International Association of Machinists, Local No. 198, AFL, that Idaho Refining Company, hereinafter referred to as the Respondent, has engaged in and is engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, hereinafter referred to as the Act, and an order having been made and entered by the National Labor Relations Board consolidating said matters, the National Labor Relations Board, by the Acting Regional Director for the Nineteenth Region as agent of the National Labor Relations Board, designated by the National Labor Relations Board Rules and Regulations, Series 2, as amended

Board's Exhibit No. 1-J—(Continued)

Article IV, Section 1, hereby issues its Consolidated Complaint and alleges the following:

I.

The Respondent is, and at all times since on or about December 17, 1937, has been, a corporation organized under and existing by virtue of the laws of the State of Nevada, with its principal office and place of business at Pocatello, Idaho.

II.

The Respondent is, and for several years last past has continuously been, engaged in the business of refining gasoline and selling and distributing gasoline, oil, and other products in the States of Idaho, Nevada, Utah, and Wyoming. In the course and conduct of such business the Respondent owns and operates, and for several years last past has continuously owned and operated, a gasoline refining plant near Pocatello, Idaho, and a fleet of motor trucks by which it transports and has transported various materials and products between various points in the States of Idaho, Nevada, Utah and Wyoming. The Respondent purchases and transports or causes to be transported and for several years last past has continuously purchased, transported or caused to be transported, large quantities of crude oil, lubricating oil, gasoline and other products from points outside the State of Idaho to its plant at Pocatello, Idaho and other points in the State of Idaho. The Respondent transports and sells, and has transported and sold, substan-

Board's Exhibit No. 1-J—(Continued)

tial quantities of gasoline, lubricating oil and other products from its plant at Pocatello, Idaho and other points in the State of Idaho to points in the States of Nevada, Utah and Wyoming.

III.

The Respondent sells and distributes the greater portion of the products distributed and sold by it by and through the agencies of Idaho Gas & Oil Company and Covey Gas and Oil Company of Idaho. These companies and each of them are, and for several years past have been, corporations wholly owned and controlled by the Respondent. The management of each of them is and has been under the direct supervision, direction, and control of the Respondent, and the Respondent is and has been an employer of the employees of each of them within the meaning of Section 2, Subsection (2) of the Act.

IV.

Chauffeurs, Teamsters and Helpers Local 440, hereinafter referred to as Teamsters Local 440, was for several years prior to on or about January 16, 1942, a labor organization within the meaning of Section 2, subsection (5) of the Act, and was chartered by, and a local unit of, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the American Federation of Labor, hereinafter referred to as the Teamsters Union. On or about January 16, 1942, Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, A. F. L.,

Board's Exhibit No. 1-J—(Continued)
hereinafter referred to as Teamsters Local 983, was chartered by the Teamsters Union as the successor to Teamsters Local 440, and at all times since said date has been, and now is, a labor organization within the meaning of Section 2, subsection (5) of the Act.

International Association of Machinists, Local No. 198, affiliated with the AFL, hereinafter referred to as Machinists Local 198, is, and for several years last past has been, a labor organization within the meaning of Section 2, subsection (5) of the Act.

Idaho Refining Company Employees' Benefit and Labor Association, hereinafter referred to as the Association, is, and for several years last past has been, a labor organization within the meaning of Section 2, subsection (5) of the Act.

V.

The Respondent, since before March 1940, has on various occasions interfered with, restrained, and coerced its employees in the exercise of their rights to self-organization and to bargain collectively through representatives of their own choosing, and has attempted to discourage the membership of its employees in Machinists Local 198, the Teamsters Union, Teamsters Locals 440 and 983, and other bona fide labor organizations, and to encourage membership of its employees in the Association, and in particular, as follows:

1. In about March 1940 Respondent by and through Kermit Rice, its truck foreman, inquired

Board's Exhibit No. 1-J—(Continued)

of an employee hired as a truck driver whether he belonged to the Teamsters Union or any labor union, and informed him that the manager of the company was opposed to unions and the membership of employees of Respondent in labor unions.

2. In about the month of August or September 1941, the Respondent through its general manager, Gilbert Moyle, and its secretary, Frank Copening, advised an employee of the Idaho Gas & Oil Company at Mackay, Idaho, that Respondent would not hire or retain in its employment truck drivers who belonged to the Teamsters Union.

3. In about the month of October 1941, said Respondent by and through Gilbert Moyle, its general manager, advised an employee of the Respondent at Boise, Idaho, that if the truck drivers employed by the Respondent joined the Teamsters Union the Respondent would discharge all of its truck drivers.

4. On November 13, 1941 the Respondent, by and through Kermit Rice, inquired of a truck driver employed by the Respondent whether he belonged to Teamsters Local 440 and whether the other truck drivers employed by the company belonged to said Local.

5. On about November 16, 1941, the Respondent by and through W. A. Sheperd, district manager of the Idaho Gas & Oil Company at Boise, Idaho, and an employee and agent of the Respondent, attempted to induce an employee of the Idaho Gas & Oil Company to report to the Respondent whether truck drivers employed by Idaho Gas & Oil Company at Boise were members of the

Board's Exhibit No. 1-J—(Continued)

Teamsters Union and advised said employee that employees who joined or belonged to said union would be discharged.

6. Since November 14, 1941, the Respondent by and through Kermit Rice, C. E. Henninger, truck dispatcher and warehouse manager, Gilbert Moyle, general manager, and Frank Copening, secretary of the Respondent, has inquired of persons applying for employment as truck drivers and of employees hired as truck drivers whether they belonged or had belonged to the Teamsters Union or any other outside labor organization, and advised them that the company was opposed to membership of employees in such unions.

7. In November and December 1941, the Respondent by and through Kermit Rice and C. E. Henninger, supervisory employees and agents of the Respondent, instructed truck drivers employed by Respondent to present any grievances they had directly to the management and not through Teamsters Local 440 or any outside organization or representatives, and indicated to said employees that the truck drivers employed by the company prior to November 14 had been discharged because they had sought to be represented by Teamsters Local 440.

8. In about January 1942, certain employees of the Respondent employed as truck drivers were transferred from Baker, Oregon to Pocatello, Idaho. At the time of said transfer Respondent by and through the agency of R. E. Stiff, instructed said

Board's Exhibit No. 1-J—(Continued)
employees that they should not engage in any union or concerted activities while employed at Pocatello or discuss working conditions with other drivers employed by the Respondent.

VI.

On or about November 14, 1942 the Respondent discharged from its employ James Ayers, K. C. Brower, S. R. Burkholder, Guy Campbell, Edward Boyd Cornia, Howard Davis, Wayne Douglas, Victor Ellingford, John Evans, Leonard Fowler, Arthur Heckert, Henry Hendricksen, Carl Hill, A. Stanley Merrill, R. E. Miller, John Ray, Leland Stanford, P. P. Stanger and Myron D. Whitesides, and at all times since said date has failed and refused to reinstate said employees or to reemploy them as truck drivers, except that the Respondent did, on or about March 11, 1942, rehire R. E. Miller as a truck driver. Said employees were discharged and have been refused reinstatement or reemployment as truck drivers because of their membership in or activity on behalf of Teamsters Local 440, and in order to discourage membership in said Teamsters Local 440 and to avoid Respondent's obligation to bargain with said Teamsters Local 440.

VII.

On or about November 14, 1941 the Respondent discharged Leo Archibald from its employ and at all times since said date has failed or refused to reinstate or reemploy him because of his member-

Board's Exhibit No. 1-J—(Continued)

ship in or activities on behalf of Machinists Local 198, or his activities on behalf of Teamsters Local 440.

VIII.

The employees of the Respondent employed as truck drivers, excluding the truck foreman, constitute, and at all times since before November 14, 1941 have constituted, a unit appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment within the meaning of Section 9, subsection (b) of the Act.

IX.

At all times since on and before November 14, 1941, Teamsters Local 440 and Teamsters Local 983, successively, have been designated or selected by a majority of the employees of the Respondent in the unit above described as their representative for the purposes of collective bargaining with the Respondent, and under the provisions of Section 9, subsection (a) of the Act have successively been, and Teamsters Local 983 now is, the exclusive representative of the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

X.

At all times since on or about November 14, 1941, the Respondent has refused to bargain col-

Board's Exhibit No. 1-J—(Continued)

lectively with Teamsters Local 440 and Teamsters Local 983 with respect to rates of pay, wages, hours of employment and other conditions of employment for the above-described unit, and in particular as follows:

1. On or about November 14, 1941, Teamsters Local 440 requested the Respondent to recognize and bargain collectively with said Local as the exclusive representative of the employees in said unit, with respect to rates of pay, wages, hours of employment, and other conditions of employment.

2. On or about November 14, 1941, Respondent, as a part of its plan to avoid its obligation to so bargain with Teamsters Local 440, discharged from its employ all the employees in said unit.

3. On or about November 21, 1941 the Respondent, although advised that Teamsters Local 440 claimed to represent a majority of the employees in said unit, refuse to recognize said Local as the exclusive representative of such employees and refused to negotiate or discuss with said Local a collective bargaining agreement or the discharge or reinstatement of the truck drivers discharged on or about November 14.

4. At all times since November 21, 1941, the Respondent has failed, neglected, and thereby refused to so recognize Teamsters Local 440 and 983, or negotiate or bargain with said Locals with respect to rates of pay, wages, hours of employment or other conditions of employment for the employees in said unit, or the discharge or reinstatement.

Board's Exhibit No. 1-J—(Continued)
ment of the drivers discharged between November 14 and 24, 1941.

XI.

In about July and August, 1937 the Respondent dominated and interfered with the formation of the Association, and in particular as follows:

1. Supervisory and confidential employees of the Respondent, and in particular George Hibbler, chief chemist, and Gilbert Moyle, general manager, initiated, suggested, advocated, or approved the organization of the Association.

2. The meeting or meetings of employees at which the Association was organized, its by-laws adopted and original officers elected, were held on the premises of the Respondent and no rental was charged by Respondent for the use of its premises for said meeting or meetings.

3. The officials, supervisory employees and confidential employees of the Respondent attended and participated in such meetings and by such attendance and participation and statements made at such meeting or meetings, participated in, assisted and encouraged the formation of the Association.

XII.

At all times since its formation, as above alleged, the Respondent has dominated and interfered with the administration of the Association and has furnished financial and other assistance to the Association, and in particular as follows:

1. The officials, supervisory employees and confi-

Board's Exhibit No. 1-J—(Continued)

dential employees of the Respondent, as above alleged, participated in and influenced the adoption of the by-laws of the Association which govern and regulate the administration of the Association.

2. The officials, supervisory employees and confidential employees of the Respondent have been, and now are, members of the Association, have attended meetings of the Association and have contributed financial support to said Association in the form of dues and assessments, and have participated in and influenced the conduct of the affairs of the Association.

3. Certain supervisory and confidential employees of the Respondent, including C. E. Henninger, Earl Porter, P. W. Carlson, George Farnsworth, have held offices and served on committees of the Association and solicited members for the Association among the employees of the Respondent.

4. The Respondent has permitted the Association to hold the meetings of its membership, board of directors and committees, on the premises of the company and has not charged the Association any rental for the use of said premises.

5. The services of stenographic employees of the Respondent have been donated by the Respondent to the Association.

6. The Respondent has granted to members of the Association, or caused to be granted to such members, a discount or reduction in the purchase price of gasoline, oil and other products purchased by members of the Association from the Covey Gas and Oil Company of Idaho.

Board's Exhibit No. 1-J—(Continued)

7. In June 1941 the Respondent, by and through Gilbert Moyle, its manager, caused a meeting of the membership of the Association to be held in order to discourage and defeat concerted activities of employees acting independently of said Association, and dominated and interfered with the conduct of said meeting.

8. In June 1941 the said Gilbert Moyle caused a purported collective bargaining agreement to be entered into between the Respondent and the Association, and dictated and prescribed the terms and provisions of said agreement.

9. The Respondent, by its opposition to outside labor organizations, as alleged in Paragraphs V, VI, VII, VIII, IX, X and XI above, has rendered assistance to the Association.

XIII.

By the acts and statements of the Respondent alleged and described in Paragraphs V, VI, VII, VIII, IX, X, XI and XII herein, and by each of them, the Respondent has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and has engaged in unfair labor practices, and is engaging in unfair labor practices, within the meaning of Section 8, subsection (1) of the Act.

Board's Exhibit No. 1-J—(Continued)

XIV.

The Respondent, by the discharge of and refusal to reinstate or reemploy certain of its employees as alleged in Paragraphs VI and VII, has discouraged and is discouraging membership of its employees in Teamsters Locals 440 and 983 and Machinists Local 198, and has encouraged and is encouraging membership of its employees in the Association, and has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsection (3) of the Act.

XV.

By its refusal to bargain collectively with Teamsters Local 440 and 983, as alleged in Paragraphs VIII, IX and X, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsection (5) of the Act.

XVI.

By the acts and statements alleged in Paragraphs XI and XII, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsection (2) of the Act.

XVII.

The activities of the Respondent alleged in Paragraphs V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV and XVI herein, occurring in connection with the operations of the Respondent as described in Paragraphs I, II and III herein, have a close, intimate, and substantial relation to trade, traffic

Board's Exhibit No. 1-J—(Continued)

and commerce among the several States of the United States, and have led to and tend to lead to labor disputes burdening and obstructing interstate commerce and the free flow thereof.

XVIII.

The aforesaid acts of the Respondent constitute unfair labor practices affecting commerce within the meaning of Section 8, subsections (1), (2), (3) and (5), and Section 2, subsections (6) and (7) of the Act.

Wherefore, the National Labor Relations Board on this 24th day of June, 1942, issues its Consolidated Complaint against Idaho Refining Company, the Respondent herein.

[Seal] ELYWN J. EAGEN,

Acting Regional Director, National Labor Relations Board, Nineteenth Region, 812 Vance Building, Seattle, Washington.

BOARD'S EXHIBIT NO. 1-K

[Title of Board and Causes.]

CONSOLIDATED NOTICE OF HEARING

Please Take Notice that on the 13th day of July, 1942, at ten o'clock in the forenoon, in a court room in the Bannock County Court House, Pocatello, Idaho, a hearing will be conducted before a duly designated Trial Examiner of the National Labor

Relations Board on the allegations set forth in the Consolidated Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Amended Charge and Charge upon which the Consolidated Complaint is based are attached hereto.

You are further notified that you have the right to file with the Acting Regional Director for the Nineteenth Region, with offices at 812 Vance Building, Seattle, Washington, acting in this matter as agent of the National Labor Relations Board, an answer to said Consolidated Complaint within ten (10) days from the service thereof.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In Witness Whereof the National Labor Relations Board has caused this, its Consolidated Complaint and Consolidated Notice of Hearing, to be signed by the Acting Regional Director for the Nineteenth Region on this 24th day of June, 1942.

[Seal]

ELYWN J. EAGEN,

Acting Regional Director,
National Labor Relations
Board.

BOARD'S EXHIBIT NO. 1-I

[Title of Board and Causes.]

AFFIDAVIT AS TO SERVICE

State of Washington

County of King—ss:

I, Maude Sipple being duly sworn, depose and say that I am an employee of the National Labor Relations Board, in the 19th Region at Seattle, Washington; on the 24th day of June, 1942, I served by postpaid registered mail, bearing Government frank, a copy of Consolidated Complaint, Consolidated Notice of Hearing, Amended Charge and Charge to the following named persons, addressed to them at the following addresses:

Idaho Refining Company

Pocatello, Idaho (Included copy of Rules and Regulations) Registry No. 243050

Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, AFL, 140 S. 1st Avenue, Pocatello, Idaho. Attention: Lee W. Owen, Secretary-Treasurer Registry No. 243051

International Association of Machinists, Local No. 198, AFL, 316 N. 9th Avenue, Pocatello, Idaho. Attention: Zenos F. George, Recording Secretary Registry No. 243052

Idaho Refining Company Employees' Benefit and Labor Association, c/o Idaho Refining Company, Pocatello, Idaho. Attention: Delmar R. Peters, President Registry No. 243053

MAUDE SIPPLE,

Assistant Clerk-Stenographer.

Subscribed and sworn to before me this 25th day of June 1942.

BETTY C. STEELE,
Designated Agent.

(Return Card Receipts for above Registered Mail Attached.)

BOARD'S EXHIBIT NO. 1-H

[Title of Board and Causes.]

MOTION TO CONTINUE HEARING

Comes Now the respondent and moves this Board that the hearing of the above entitled consolidated cases which has been set for July 13, 1942 be continued until July 29, or thereafter at the convenience of the Board. This motion is made for the reason that Henry D. Moyle, one of the attorneys for the respondent, and its vice-president, participated in many of the events upon which many of the charges in the complaint are based, and it is necessary for a full hearing of the facts that the said Mr. Moyle be present at the hearing. The said Henry D. Moyle is chairman of a Petroleum Industry Committee, District 4, appointed by Petroleum Coordinator for War, and has been called to Washington, D. C. by the Petroleum Coordinator for meetings to be held July 13 and following.

Dated this 6th day of July, 1942.

MOYLE, RICHARDS & McKAY,
Residing at Salt Lake City,
Utah.

MERRILL & MERRILL,
Residing at Pocatello, Idaho,
Attorneys for respondent.

BOARD'S EXHIBIT NO. 1-G

[Title of Board and Causes.]

MOTION FOR EXTENSION OF TIME IN
WHICH TO FILE ANSWER

Comes Now the respondent and moves this Board for an extension of time until July 11, 1942 in which to file its answer to the consolidated complaint herein.

This motion is made upon the ground that some of the former employees, who it is alleged in the complaint made certain representations, have been and now are out of the States of Utah and Idaho and have not been available for questioning by the respondent.

Dated this 6th day of July, 1942.

MOYLE, RICHARDS & McKAY,
Residing in Salt Lake City,
Utah.

MERRILL & MERRILL,
Residing in Pocatello, Idaho,
Attorneys for Respondent.

BOARD'S EXHIBIT NO. 1-F

[Title of Board and Causes.]

MOTION TO MAKE MORE SPECIFIC

Comes now the respondent and moves that it be advised of the following:

1. The name of the "employee" referred to in paragraph V-1.
2. The name of the "employee" referred to in paragraph V-2.
3. The name of the "employee" referred to in paragraph V-3.
4. The name of the "truck driver" referred to in paragraph V-4.
5. The name of the "employee" referred to in paragraph V-5.
6. The names of the "persons" referred to in paragraph V-6.
7. The names of the "truck drivers" referred to in paragraph V-7.
8. The names of "certain employees" referred to in paragraph V-8.

The paragraphs herein referred to are the paragraphs so numbered in the Consolidated Complaint.

This motion is made upon the ground that respondent can not fully investigate the facts and prepare the case for its information and for trial without the clarification of the complaint herein requested.

Dated this 6th day of July, 1942.

MOYLE, RICHARDS & McKAY,
Salt Lake City, Utah.

MERRILL & MERRILL,
Pocatello, Idaho.

Attorneys for Respondent.

BOARD'S EXHIBIT NO. 1-E

[Title of Board and Causes.]

ORDER POSTPONING HEARING AND
DESIGNATING PLACE OF HEARING

It Is Hereby Ordered that the hearing in the above entitled matters scheduled to begin at ten o'clock in the forenoon on the 13th day of July, in a court room in the Bannock County Court House, Pocatello, Idaho be, and the same hereby is postponed to the 3rd day of August, 1942, and the place of hearing is changed to the Grand Jury Room, United States Post Office Building, Pocatello, Idaho.

Dated this 9th day of July, 1942.

[Seal]

THOMAS P. GRAHAM, JR.,
Regional Director, Nineteenth
Region.

BOARD'S EXHIBIT NO. 1-D

[Title of Board and Causes.]

ORDER FOR EXTENSION OF TIME IN
WHICH TO FILE ANSWER

It Is Hereby Ordered that the time for filing answer to the Consolidated Complaint in the above entitled matters, is extended to July 11, 1942.

Dated this 9th day of July, 1942.

[Seal] THOMAS P. GRAHAM, JR.,
Regional Director, Nineteenth
Region.

BOARD'S EXHIBIT NO. 1-C

[Title of Board and Causes.]

AFFIDAVIT AS TO SERVICE

State of Washington

County of King—ss:

I, Maude Sipple being duly sworn, depose and say that I am an employee of the National Labor Relations Board, in the 19th Region at Seattle, Washington; on the 9th day of July, 1942, I served by postpaid registered mail, bearing Government frank, a copy of Order Postponing Hearing and Designating Place of Hearing Order for Extension of Time in Which to File Answer to the following named persons, addressed to them at the following addresses:

1. Idaho Refining Company
Pocatello, Idaho Registry No. 243081
2. Teamsters, Chauffeurs, Warehousemen and
Helpers, Local No. 983, AFL, 140 S. 1st Avenue,
Pocatello, Idaho. Attention: Lee W. Owen,
Secretary-Treasurer Registry No. 243082
3. International Association of Machinists, Local
No. 198, AFL, 316 N. 9th Avenue, Pocatello,
Idaho. Attention: Zenos F. George, Recording
Secretary Registry No. 243083
4. Idaho Refining Company Employees' Benefit and
Labor Association, c/o Idaho Refining Company,
Pocatello, Idaho. Attention: Delmar R. Peters,
President Registry No. 243084

MAUDE SIPPLE,
Assistant Clerk-Stenographer.

Subscribed and sworn to before me this 9th day of
July 1942.

BETTY C. STEELE,
Designated Agent.

(Return Card Receipts for above Registered Mail
attached.)

BOARD'S EXHIBIT No. 1-B

[Title of Board and Causes.]

CONSOLIDATED ANSWER TO
CONSOLIDATED COMPLAINT

Comes now the Idaho Refining Company, here-
inafter called respondent and for answer to the

Board's Exhibit No. 1-B—(Continued)
consolidated complaint on file herein admits, denies
and alleges, as follows:

I.

Respondent admits the allegations contained in
paragraph numbered I of said complaint.

II.

Respondent admits the allegations contained in
paragraph numbered II of said complaint.

III.

Answering paragraph numbered III of said complaint, respondent denies that it sells and distributes the greater portion of the products distributed and sold by it through Idaho Gas & Oil Company and Covey Gas and Oil Company of Idaho, alleging in this particular that it sells and distributes less than one-half of its products through said companies.

Respondent denies that the Idaho Gas and Oil Company is owned and controlled by respondent, alleging in this respect that the respondent owns no stock in the said Idaho Gas & Oil Company, but that said stock is owned by individual stockholders. Respondent admits that it owns and controls the Covey Gas and Oil Company of Idaho.

IV.

Answering paragraph numbered IV of said complaint the respondent is without knowledge of the allegations therein contained save and except it

Board's Exhibit No. 1-B—(Continued)

admits Idaho Refining Company Employees' Benefit and Labor Association is now, and for several years last past has been a labor organization within the meaning of Section 2, subsection (5) of the act.

V.

Answering paragraph numbered V of said complaint the respondent denies that since before March 1940, or at any other time, or at all, it has on various or any occasion interfered with, restrained and/or coerced its employees in the exercise of their rights to organize and to bargain collectively through representatives of their own choosing, and denies that it has attempted to discourage the membership of its employees in Machinists Local 198, Teamsters Locals 440 and 983, or any other bona fide labor organization, and denies that it has encouraged membership of its employees in the association referred to in said complaint.

Respondent answers the numbered allegations of said paragraph as follows:

1. Respondent denies that on or about March 1940 by and through Kermit Rice, its truck foreman, or anyone else, it inquired of an employee hired as a truck driver whether he belonged to the Teamsters Union or any labor union, and denies that it informed him that the manager of the company was opposed to unions and membership of employees in labor unions.

Board's Exhibit No. 1-B—(Continued)

2. Respondent denies that in the month of August or September 1941, or at any other time through its local manager Gilbert Moyle and its Secretary Frank Copenig, or either of them, or at all, it advised an employee of Idaho Gas & Oil Company at Mackay, Idaho, that respondent would not hire or retain in its employment truck drivers who belonged to the Teamsters Union.

3. Respondent denies that in about the month of October, 1941, or at any other time, through its manager Gilbert Moyle or any other person, it advised an employee of the respondent at Boise, Idaho, that if the truck drivers employed by the respondent joined the Teamsters Union, the respondent would discharge all of its truck drivers.

4. Respondent denies that on November 13, 1941, or at any other time by and through Kermit Rice, or any other person, it inquired of a truck driver employed by the respondent whether he belonged to Teamsters Local 440, and whether the other truck drivers employed by the Company belonged to said local.

5. Respondent denies that on or about November 16, 1941, or at any time by and through W. A. Sheppard, District Manager of Idaho Gas & Oil Company, at Boise, Idaho, or anyone else, it attempted to induce an employee of Idaho Gas & Oil Company to report to the respondent whether truck drivers employed by Idaho Gas & Oil Company at Boise, Idaho, were members of a Teamsters Union, and/or advised said employee that employees who

Board's Exhibit No. 1-B—(Continued)

joined or belonged to said union would be dismissed.

6. Respondent denies that since November 14, 1941, or any other date, by and through Kermit Rice, C. E. Henninger, Gilbert Moyle, Frank Copening, or any of them, or anyone else, it has inquired of persons applying for employment as truck drivers, and/or of employees hired as truck drivers, whether they belonged or had belonged to the Teamsters Union, or any outside labor organization and denies that they or any one advised such employees that the company was opposed to membership of employees in such unions; respondent states that when any prospective employee applied for employment he was asked only such questions as would enable respondent to determine his fitness for the position desired and such general questions as to his affiliation with social, lodge or church organizations. Respondent alleges that it has never refused employment to any person by reason of his membership in, or affiliation with any labor organization.

7. Respondent denies that in November and December 1941, or at any other time, by and through Kermit Rice, C. E. Henninger or anyone else, it instructed truck drivers employed by respondent to present any grievance they had directly to the management and not through Teamsters Local 440, or any outside organization or representatives, and denies that it indicated to said employees that the truck drivers employed by the

Board's Exhibit No. 1-B—(Continued)

Company prior to November 14 had been discharged because they had sought to be represented by Teamsters Local 440.

8. Respondent admits that about January, 1942, certain employees employed as truck drivers were transferred from Baker, Oregon to Pocatello, Idaho, but deny that the respondent by and through the agency of R. E. Stiff or anyone else instructed the said employees that they should not engage in any union activities while employed at Pocatello, or discuss working conditions with other drivers employed by respondent. Respondent further alleges that if the said R. E. Stiff made any such comment as alleged in said paragraph respondent is not accountable therefor; that such comment, if made, was without the scope of his agency, was beyond the knowledge of respondent, and was not at its instance or suggestion.

VI.

Respondent admits that on or about the 14th day of November, 1941, it discharged certain employees, namely James Ayers, K. C. Brower, S. R. Burkholder, Guy Campbell, Edward Boyd Cornia, Howard Davis, Victor Ellingford, John Evans, Leonard Fowler, Arthur Heckert, Henry Henriksen, Carl Hill, A. Stanley Merrill, R. E. Miller, John Ray, Leland Stanford, P. P. Stanger, and Myron Whitesides; respondent denies that it discharged Wayne Douglas at said time, alleging in this particular that the said Wayne Douglas was discharged in

Board's Exhibit No. 1-B—(Continued)

September, 1941, because of his having disregarded specific instructions in the driving of a truck and wrecked said truck. Respondent admits that it has not reemployed all of said above named persons as truck drivers, admits that it has employed R. E. Miller, and alleges that it has since said time also employed K. C. Brower, who remained in its employ until he accepted employment in a defense plant, and that it has also employed Myron D. Whitesides who remained in its employ until he left it voluntarily on July 1st, 1942. Respondent further alleges that it has offered employment to S. R. Burkholder, Edward Boyd Cornia and John Evans, but for various reasons they declined to be further employed. Respondent denies that said employees were discharged and have been refused reinstatement or re-employment as truck drivers because of their membership in, or activity on behalf of Teamsters Local 440, and denies that said discharge was in order to discourage membership in said Teamsters Local 440, and to avoid respondent's obligation to bargain with said Teamsters Local 440. In this respect respondent alleges that the discharge of said employees was necessary for the preservation of the business of delivering petroleum products by the respondent, more particularly as follows:

That said employees had, over the protest of respondent, repeatedly engaged in habits not conducive to efficient and proper business practices and had repeatedly abused the equipment of the

Board's Exhibit No. 1-B—(Continued)

respondent and subjected it to such loss and hazard that the respondent's insurance carrier refused to carry further said insurance because of serious financial losses the said carrier had suffered in consequence of the driving habits of the said employees. That on November 10th, 1941, the said carrier served notice on the respondent that respondent's insurance would be cancelled on November 17th.

That the said carrier did so cancel respondent's insurance because of the said driving records. That respondent could not haul its products under Interstate Commerce Commission rules without insurance. That a showing of an employment of a new force of drivers was necessary to obtain the granting of a new policy of insurance to the respondent.

VII.

Respondent admits that on or about the 14th day of November, 1941, it discharged Leo Archibald from its employ and that it has failed and refused to reinstate and reemploy him, but denies that such was because of his membership in, or activities on, behalf of Machinists Local 198, or his activities on behalf of Teamsters Local 440.

Respondent alleges in this particular that Leo Archibald was discharged because of drunkenness, and of the habit of drinking which he had acquired, rendering his employment unsafe to the respondent.

Board's Exhibit No. 1-B—(Continued)

VIII.

Respondent denies that the employees employed as truck drivers, excluding the foreman, constituted at any time a unit appropriate for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment or other conditions of employment within meaning of Section 9, subsection (b) of the Act.

IX.

Respondent is without knowledge as to whether Teamsters Local 440 and Teamsters Local 983 successively have been designated or selected by a majority of the employees of respondent in any unit as their representative for the purpose of collective bargaining with respondent, and denies that they are the exclusive representative of any employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

X.

Respondent admits that it refused to bargain with Teamsters Local 440 and Teamsters Local 983, alleging in this particular that on or about the dates mentioned in said paragraph certain individuals whom respondent is now advised were representing said locals approached respondent but refused to give any evidence of any right to represent said employees or any of them, though requested to do so by respondent, and respondent al-

Board's Exhibit No. 1-B—(Continued)

leges that said individuals have never had the right to represent the employees of respondent.

Respondent further alleges in this particular that its said employees had theretofore legally and properly organized the association referred to in said complaint and that the respondent was under written contract with said association, and that the discharged employees hereinbefore listed were members of the said association at the time of their discharge.

XI.

Answering paragraph number XI of said complaint respondent denies that on or about July or August 1937 it dominated or interfered with the formation of the Association referred to in said complaint.

Respondent answers the specific allegations contained in paragraph No. XI, as follows:

1. Respondent denies that its supervisory or confidential employees, and particularly Gilbert Moyle as General Manager initiated, suggested, advocated or approved the organization of the Association. Respondent has no knowledge that George Hibbler was active in the organization of the said association, and alleges that if the said George Hibbler was so active, such activity was done on his own behalf as an employee and was not done on respondent's behalf, nor at respondent's suggestion or approval. Respondent further denies that the said George Hibbler ever took part in the organizing of said association, or acted there-

Board's Exhibit No. 1-B—(Continued)

in, while holding any supervisory or confidential position with the respondent.

2. Respondent admits that meetings of said employees have been held on the premises of the respondent, but allege that rental has been charged them therefor. In this respect respondent further alleges that there is no other place conveniently located where said employees could meet, and that it has freely offered said premises for other organizations and labor unions without rent or restriction, and that other unions have requested the use of the said premises, and have so used them.

3. Respondent further denies that its officers or supervisory or confidential employees attended and participated in the meetings described in paragraph XI (3) of the consolidated complaint, or in any other meetings alleged in the complaint.

XII.

Answering paragraph numbered XII of said complaint, respondent denies that it has ever dominated or interfered with the administration of said association and denies that it has furnished financial or other assistance to the association.

Respondent answers the particular allegation of said paragraph as follows:

1. Respondent denies that its officers, supervisory employees or confidential employees participated in or influenced the adoption of the by-laws of the association which govern and regulate its administration.

Board's Exhibit No. 1-B—(Continued)

2. Respondent denies that its officials, supervisory employees or confidential employees have been or are now members of said association or that they have attended meetings and contributed financial support to said association in the form of dues and assessments, or otherwise, and denies that it has participated in and influenced the conduct of the affairs of the association.

3. Respondent is without information as to what part C. E. Henninger, Earl Porter, F. W. Carlson and George Farnsworth took in said association, or what offices they held, but denies that they or any of them ever acted therein while holding any supervisory or confidential position with the respondent.

4. Respondent admits that it has permitted the association to hold meetings of its members, board of directors and committees on the premises of the company, but alleges that it has charged the association rental therefor. It alleges in this particular, however, that the use of the premises without charge has been extended to and accepted by other labor organizations. Respondent further alleges that other unions have repeatedly demanded and obtained the use of the said premises without charge for the purpose of holding elections among the members, and respondent is informed and therefore alleges that at each election the employees of respondent have voluntarily and without suggestion from respondent overwhelmingly voted against the said other unions.

Board's Exhibit No. 1-B—(Continued)

5. Respondent denies that it has donated the services of stenographic employees to said association.

6. Respondent denies that it has granted to members of the association as such, a discount or reduction in the purchase of gasoline, oil or other products purchased by members of the association from the Covey Gas & Oil Company of Idaho or from any one else; respondent alleges in this particular that such discounts and reductions as have been given have been given to all employees, irrespective of membership in said association or any other association.

7. Respondent denies that in June, 1941, by and through Gilbert Moyle it caused a meeting of the members of the association to be held in order to discourage and defeat concerted activities of employees acting independently of said association and denies that it dominated and interfered with the conduct of the said meeting.

8. Respondent denies that in June, 1941, the said Gilbert Moyle caused a purported collective bargaining agreement to be entered into between respondent and the association, and denies that he dictated and prescribed the terms and provisions of said agreement, alleging in this respect that said agreement was an independent act of the said association and was drawn by the attorney chosen by the association.

9. Respondent denies that by reason of any opposition to outside labor organizations (which op-

Wherefore Respondent Prays that no adverse finding be made against it in this matter, but that said consolidated complaint be dismissed.

IDAHO REFINING COMPANY

By HENRY D. MOYLE

Vice President

Pocatello, Idaho

Subscribed and sworn to before me this 9th day of July, 1942.

[Seal]

MILLICENT D. CORNWALL

Notary Public, residing at
Salt Lake City, Utah

MOYLE, RICHARDS and McKAY

720 Newhouse Building,
Salt Lake City, Utah

MERRILL & MERRILL

504 Carlson Building,
Pocatello, Idaho

Attorneys for respondent.

United States of America
Before the National Labor Relations Board

Case No. C-2380

In the Matter of
IDAHO REFINING COMPANY

and

TEAMSTERS, CHAUFFEURS, WAREHOUSE-
MEN AND HELPERS, LOCAL No. 983,
A.F.L.

Case No. C-2381

In the Matter of
IDAHO REFINING COMPANY

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, LOCAL No. 198, affiliated with
the A.F.L.

Mr. Louis S. Penfield and Mr. Gerald P. Leicht,
for the Board.

Mr. Henry D. Moyle and Mr. David L. McKay, of
Salt Lake City, Utah, and Mr. A. L. Merrill,
of Pocatello, Idaho, for the respondent.

Mr. Delmar R. Peters, of Pocatello, Idaho, for
the Association.

Mr. Herman J. De Koven, of counsel to the Board.

DECISION AND ORDER

Upon a complaint issued pursuant to charges filed by Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, A. F. of L., herein called the Union, and by International Association of Machinists, Local No. 198, A. F. of L., against Idaho Refining Company, Pocatello, Idaho, herein called the respondent, a hearing was held before a Trial Examiner in Pocatello, Idaho, from August 3 to 13, 1942, in which the Board, the respondent, and Idaho Refining Company Employees' Benefit and Labor Association, herein called the Association, participated by their representatives. The Board has reviewed the Trial Examiner's rulings on motions and on objections to the admission of evidence and finds that no prejudicial error was committed. The rulings are hereby affirmed.

On October 20, 1942, the Trial Examiner issued his Intermediate Report, attached hereto, in which he found that the respondent had engaged in unfair labor practices. Thereafter, the respondent filed exceptions to the Intermediate Report and a brief in support of its exceptions. Oral argument was held before the Board at Washington, D. C., on January 7, 1943.

The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except insofar as they are inconsistent with our decision and order hereinafter set forth.

1. We agree with the Trial Examiner's conclu-

sion that the truck drivers at Pocatello were discriminatorily discharged.¹

That the underlying reason for the discharges as not the cancelation of the insurance, as alleged by the respondent, is evidenced in part by the fact that approximately half of the discharged drivers had never had an accident and therefore did not contribute to the loss ratio or accident frequency. In explanation of its action, the respondent contends that it did not have the accident records of the individual drivers, that it did not have adequate time in which to effect a segregation of those who had never had an accident, and that the discharge of all the drivers was necessary in order to obtain new insurance. We find these contentions to be without merit. The record discloses that the accident records of the individual drivers were available both at Salt Lake City, where the respondent contends the decision to discharge was made, and at Pocatello, where we find, as did the Trial Examiner, the decision was made. Moreover, the accident records of the individual drivers could have been readily secured by the respondent from the Insurance Company and adjusters' bureaus. Nor do we credit the respondent's contention that it did not have ample time in which to effect a segregation.

¹We do not agree with the subsidiary finding of the Trial Examiner that Gilbert Moyle told Evans, one of the drivers, on November 14 that he had been ordered discharged by the Insurance Company.

As for the respondent's assertion that it had to discharge all the drivers in order to obtain new insurance, it is clear that prior to the discharge no insurance company or agent required that the respondent discharge any of the drivers as a condition to the issuance of a policy. The respondent contends, however, and Henry Moyle so testified, that Gilbert Sheets and Henry Moyle, who were familiar with the operations of insurance companies, believed that no insurance company would issue a policy unless the respondent discharged all the drivers. In support of this contention, the respondent points to a letter dated November 24, 1941, to the respondent from Sweeney, an insurance broker other than the one who obtained the new insurance, in which a quotation for new insurance was submitted on the understanding that the respondent had discharged all drivers in its employ. There is also the testimony of Henry Moyle that on November 17, 1941, Watkins, the insurance broker through whom the respondent obtained the new insurance, and Sweeney, both told him that if the drivers had not been discharged they would not have considered issuing a policy to the respondent. The foregoing is not persuasive, however, in view of the fact that Benson, Sweeney's principal, who was responsible for the letter of November 24, and Watkins, were merely advised that the respondent had discharged the drivers and were not told that some of them had never had an accident. They had heard that the respondent had a high loss ratio and that the accidents were

generally due to careless driving. With such information at hand, and in the absence of knowledge that approximately half of the drivers had never had an accident, it would seem reasonable for them to have regarded all the drivers, as a unit, as responsible for the high loss ratio. It is unlikely that any insurance company would have required the respondent to discharge drivers with perfect records and hire new ones whose ability in handling the respondent's equipment had not been tested. On the contrary, it would seem that the incentive to an insurance company's issuance of a policy would have been greater if the respondent had discharged only those drivers with accident records. This conclusion is substantiated by Benson's admission that if he knew that one or more drivers were responsible for a company's high loss ratio, he would either refuse to write insurance for that company at all or demand that the particular drivers be removed.

That the cancelation of the insurance was not the motivating cause of the discharges is further evidenced by the respondent's failure to take any action with regard to drivers operating outside of Pocatello who had had accidents which contributed to the high loss ratio and accident frequency.²

²The respondent contends that some of the drivers who operated outside of Pocatello were lessees or independent contractors. The record discloses, however, that some of those who drove the trucks of the respondent, or of Covey or Idaho, outside of Pocatello, were clearly employees, and among them were two who had had accidents on which

The respondent contends that it confined the discharges to the Pocatello drivers because they were the principal offenders. However, the record discloses that 4 of the drivers operating outside of Pocatello had had serious accidents and 3 had had minor ones. This is to be compared with the 5 Pocatello drivers who had had serious accidents and the 3 who had had minor ones. Moreover, of the 12 drivers who had had accidents on which the Insurance Company is shown to have suffered a loss, 7 were not Pocatello drivers. Although 3 of these 7 had had minor accidents on which insubstantial sums were paid by the Insurance Company, cancellation of the respondent's insurance, according to the agent who handled the canceled policy, was effected not only because of the amount of the losses but also because of the number of accidents, and Gilbert Sheets admitted that he knew that insurance companies were concerned about accident frequency as well as loss ratio.

That the union membership and activities of the Pocatello drivers were the underlying cause of their discharge is evidenced not only by the inadequacy of the reason assigned by the respondent for the discharge, and the respondent's general hostility

the Insurance Company had paid substantial sums. Moreover, the respondent did not establish that it was without power to prevent those who may have been lessees or independent contractors from continuing to drive the equipment which was covered by the insurance policy and in which the respondent had some interest.

toward outside unions,³ but also by the statements and activities, properly found by the Trial Examiner, of Manager Gilbert Moyle, Foreman Sheppard, Copenig, secretary of the respondent, and Foremen Henninger, Stiff, and Rice. Such statements and activities clearly indicate that the respondent was opposed to the unionization of the Pocatello drivers and that their union membership and activities were the motivating cause of their discharge.⁴

2. We agree with the Trial Examiner's conclusion that Leo Archibald was discriminatorily discharged. Except with respect to a few minor derelictions which had occurred some time prior to the discharge, Archibald, whom we find to be a trustworthy witness, denied the testimony of the

³The respondent's hostility toward outside unions is clearly manifested by the conduct of its officials and supervisory employees, as properly found by the Trial Examiner, in interrogating employees as to union membership, instructing them not to engage in union activity, threatening to discharge them because of their union membership, declaring that the Union could be of no benefit to the employees and that the respondent was opposed to outside unions, and expressing a preference for the Association, as well as the respondent's domination and support of the Association.

⁴One of the drivers (K. C. Brower) had not joined the Union. However, we agree with the Trial Examiner that because of Brower's association and employment with the other drivers, the respondent concluded that he too was a union member and discharged him in furtherance of its effort to destroy the Union.

respondent's witnesses, whom we find to be incredible, regarding the derelictions with which Archibald is charged. We are convinced that the few minor derelictions which were admitted by Archibald were not the motivating cause of his discharge. Nor do we believe that Archibald's illness on a few occasions, or his absences, during his 10 months of employment, were responsible for his discharge. Also, we credit Archibald's denial of the testimony of the witnesses for the respondent that Archibald had been threatened with discharge on various occasions.

We believe it significant that Archibald, who was active in organizing the truck drivers at Pocatello,⁵ was discharged on November 14, the same day that the drivers were discriminatorily discharged. The respondent, in an effort to demonstrate that Archibald's discharge was in no way connected with that of the drivers, attempted to prove that the decision to discharge Archibald was made some time prior to November 14 and not later than November 10, the date of his last alleged dereliction. That this position is untenable is demonstrated not only by the inconsistency in the testimony of the respondent's own witnesses as to when the decision to discharge Archibald was made, but also by the absence of a clear and consistent ex-

⁵In addition to the evidence set forth in the Intermediate Report in support of the conclusion that the respondent had knowledge of Archibald's union activities, we note and find that many of his activities on behalf of the Union were carried on at the plant.

planation by the respondent as to why Archibald was discharged on November 14 rather than at any other time. Foreman Rice, in his testimony, assigned different reasons for not discharging Archibald on November 10, when, according to Rice, the decision to discharge him was made. He first testified that he had to wait until "we caught up on our work" and stated that on November 14 the work was "caught up with."⁶ However, Subforeman Brown, as well as Rice himself, admitted that at the time of Archibald's discharge the mechanics were as busy as ever. Later in his testimony, the reason given by Rice for not discharging Archibald on November 10 was that he had to wait until he found another mechanic. The record discloses, however, that mechanics were available for employment between November 10 and 14, and that, in any event, another mechanic to replace Archibald was not hired until November 20, 6 days after Archibald's discharge.

3. We agree with the Trial Examiner's conclusion that Wayne Douglas' discharge was discriminatory. That the motivating cause of his discharge was not his accident at Weiser on October 16, as the respondent alleges, is amply supported by the record. Douglas was not discharged until 5 weeks after the accident, and the respondent has not satisfactorily explained the reason for the de-

⁶We do not concur in the statement of the Trial Examiner that "it may be true that by November 13 Archibald had completed a specific work assignment."

lay in discharging him. Also, when Douglas was first notified of his discharge,⁷ no reason was given him for such action and he was told not to ask any questions. Further, when Douglas inquired of Gilbert Moyle and Copening a day or two after his discharge as to the reason therefor, he was told that it was because of the cancelation of the insurance, and no mention was made of the Weiser accident.⁸

In support of its contention that Douglas was not discharged because of his union membership, the respondent points to the fact that five other drivers who were employed with Douglas at Baker, Oregon, were union members, having joined a local of the Teamsters Union other than Local 440, and were not discharged. We do not believe that this circumstance negates a discriminatory motive in the discharge of Douglas. The bulk of the respondent's drivers were employed at Pocatello, and the evidence clearly establishes that the respondent was perturbed over the unionization of the

⁷This was on November 20, when Mrs. Stiff instructed Douglas "not to pull any more trips, and not to ask any questions." The record discloses that Mrs. Stiff served as secretary to Mr. Stiff, who we find was a foreman acting on behalf of the respondent, and we infer from the entire record that what Mrs. Stiff told Douglas on November 20 was pursuant to the instructions of Foreman Stiff or some other representative of the respondent.

⁸This finding is based upon the testimony of Douglas, whom we find to be a credible witness. We do not credit Gilbert Moyle's and Copening's denial of Douglas' testimony.

Pocatello drivers. We find that Douglas' discharge was motivated by the fact that while working at Pocatello, he had joined Local 440 of the Teamsters Union during its organizational drive and that, so far as his union membership is concerned, he was identified by the respondent with the Pocatello group even though he returned to Baker, Oregon, in the early part of October 1941.

4. We do not agree with the Trial Examiner's findings and conclusion that the respondent refused to bargain collectively with the Union in violation of the Act. We are not satisfied that at the conference of November 21 between the respondent and the Union, the latter purported to represent truck drivers alone. Under these circumstances, we are not convinced that the respondent's request for proof that the Union represented a majority was not made in good faith. Since the respondent's refusal to bargain is predicated on the Union's failure to furnish such proof, we find that under the circumstances presented herein, there has been no violation of Section 8 (5) of the Act.⁹

⁹In finding that there has been no refusal to bargain in this case, we note that the decision to discharge the drivers was made prior to the Union's request for recognition and collective bargaining. We do not agree with the finding of the Trial Examiner that James Ayers told Foreman Rice on November 13 that the drivers were going to present a contract. The record establishes that Ayers told Rice that the drivers wanted a certain wage, but it is not clear from Ayers' testimony that he informed Rice that their demands were being incorporated in a contract which the drivers or the Union were planning to submit to the respondent.

We shall accordingly dismiss the complaint insofar as it alleges that there has been such a violation.¹⁰

The Remedy

We have found that the respondent discriminated in regard to the hire and tenure of employment of the employees listed in Appendix A, attached hereto, and of R. E. Miller, one of the discharged Pocatello drivers. We turn now to a consideration of their reinstatement and back pay.

We agree with the conclusion of the Trial Examiner that the respondent's offers of employment on the loading dock to some of the discharged drivers were not offers of substantially equivalent employment. The nature of the work and the skill required, as well as the earnings,¹¹ were substantially different in the two types of employment.¹² We also find, in view of the differences in the na-

¹⁰We accordingly find it unnecessary to determine the appropriate bargaining unit.

¹¹We do not agree with the finding of the Trial Examiner that their earnings on the loading dock would have been approximately the same as their earnings as drivers. Since, according to the testimony of Foreman Henninger, they would have averaged 14 hours overtime on the loading dock, their earnings in such capacity would have been substantially less than their earnings as drivers.

¹²In finding that the offers of work on the loading dock were not offers of substantially equivalent employment, we do not rely, as did the Trial Examiner, on the fact that nothing was said to the individuals in question about the restoration of any of their previous privileges.

ture of the work and the skill required, that Myron D. Whitesides' employment in the respondent's warehouse subsequent to his discharge was not substantially equivalent to employment as a truck driver.

The respondent contends that Guy Campbell, Howard Davis, John Ray, and Leland Stanford, who were extra-board drivers, would in any event have been discharged because of the decrease in the number of drivers required by the respondent during the winter season, and that therefore such drivers should not be reinstated. Foreman Rice testified that on October 15, 1941, he advised these four drivers that there would not be sufficient work for them during the winter and that they should therefore seek other employment. We find this contention to be without merit. The record discloses that during the winter the respondent hired drivers to replace all the discharged drivers, including the four in question.¹³

The respondent also contends that those discharged drivers listed in Appendix A whose acci-

¹³Thus, a list of the respondent's truck drivers employed between November 14, 1941, and March 28, 1942, which was admitted in evidence, discloses that 17 new drivers were hired between November 14 and 18, 1941, to replace the 18 who had been discharged; that the employment of 2 of these was terminated by November 27, 1941; that 5 additional drivers were employed between December 1 and 23, 1941; and that between November 14, 1941, and March 28, 1942, the respondent had an average of 19 drivers in its employ.

dents were caused by their carelessness should not be reinstated. We have found that the union membership and activities of the Pocatello drivers, as well as of Douglas, were the underlying cause of their discharge. Under such circumstances, in order to effectuate the purposes and policies of the Act, we would normally require the respondent to reinstate each of them and make each whole for any loss of pay he may have suffered by reason of the discrimination. However, some of these drivers, namely, Boyd Cornia, Wayne Douglas, Henry Henriksen, A. Stanley Merrill, and Myron D. Whitesides, had been involved in serious accidents. We do not believe it would effectuate the policies of the Act to apply our usual remedy to these five employees. Accordingly, we shall order the reinstatement, with back pay, of all the drivers listed in Appendix A, except the five individuals mentioned above.¹⁴

Since R. E. Miller has been reemployed by the respondent as a truck driver, we shall not order

¹⁴The record indicates that some of the individuals listed in Appendix A whom we shall order reinstated may have obtained regular and substantially equivalent employment elsewhere since their discharge by the respondent. We find that it will effectuate the policies of the Act to require the respondent to offer reinstatement to such persons whether or not they, or any of them, have obtained other regular and substantially equivalent employment. See *Matter of Ford Motor Company and International Union, United Automobile Workers of America*, Local Union No. 249, 31 N.L.R.B. 994, 1100.

his reinstatement; however, in order to effectuate the purposes and policies of the Act, we shall order the respondent to make him whole for any loss of pay he may have suffered by reason of his discriminatory discharge on November 14, 1941, by payment to him of a sum of money equal to the amount he normally would have earned as wages from the date of the discrimination against him to the date of his reemployment with the respondent as a truck driver, less his net earnings during such period.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (e) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Idaho Refining Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of Idaho Refining Company Employees' Benefit and Labor Association, or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to said labor organization or any other labor organization of its employees;

(b) Recognizing or in any manner dealing with Idaho Refining Company Employees' Benefit and

Labor Association as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment;

(c) Performing or giving effect to the contract of June 1, 1942, with Idaho Refining Company Employee's Benefit and Labor Association, or to any amendment, extension, or renewal thereof, or to any other contract, agreement or understanding entered into with said Association relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment;

(d) Discouraging membership in Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, or International Association of Machinists, Local No. 198, both affiliated with the American Federation of Labor, or any other labor organization of its employees, by discharging or refusing to reinstate, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment;

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of

collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Idaho Refining Company Employees' Benefit and Labor Association as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish said Association as such representative;

(b) Offer to the employees listed in Appendix A, except Boyd Cornia, Wayne Douglas, Henry Henriksen, A. Stanley Merrill, and Myron D. Whitesides, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;

(c) Make whole each of the employees ordered reinstated in paragraph 2 (b) of this Order for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages from the date of the respondent's discrimination against him to the date of the respondent's offer of reinstatement, less his net earnings during such period;

(d) Make whole R. E. Miller for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages from the date of the respondent's discrimination against him to the date of his reemployment with the respondent as a truck driver, less his net earnings during such period;

(e) Post immediately in conspicuous places at its plant at Pocatello, Idaho, and at the premises occupied or used by the respondent at Baker, Oregon and Boise, Idaho, and maintain for a period of not less than sixty (60) consecutive days from the date of posting, notices to its employees, stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), (c), (d), and (e) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a), (b), (c) and (d) of this Order; and (3) that the respondent's employees are free to remain or become members of Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, and International Association of Machinists, Local No. 198, both affiliated with the American Federation of Labor, and that the respondent will not discriminate against any employee because of membership or activity in those organizations;

(f) Notify the Regional Director for the Nineteenth Region in writing within ten (10) days from

the date of this Order what steps the respondent has taken to comply herewith.

It Is Hereby Further Ordered that the complaint be, and it hereby is, dismissed insofar as it alleges that the respondent has refused to bargain collectively with Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 440, and its successor, Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, both affiliated with the American Federation of Labor.

Signed at Washington, D. C., this 25th day of February 1943.

HARRY A. MILLIS

Chairman

WM. M. LEISERSON

Member

[Seal]

National Labor Relations
Board

Appendix A

Leo Archibald

James Ayers

K. C. Brower

S. R. Burkholder

Guy Campbell

Boyd Cornia

Howard Davis

Wayne Douglas

Victor Ellingford

John Evans

Leonard Fowler

Arthur Heckert

Henry Henriksen

Carl Hill

A. Stanley Merrill

John Ray

Leland Stanford

P. P. Stanger

Myron D. Whitesides

Gerard D. Reilly, dissenting in part:

I am compelled to dissent from the view adopted by the majority, that the drivers at Pocatello, who had been engaged in accidents resulting in claims which the insurance company had been called upon to bear, were discharged in violation of Section 8 (3) of the Act. The sole basis for the Board's finding that the discharge of all the Pocatello drivers was discriminatory is the fact that the respondent could not have reasonably believed that any insurance company would have required it to discharge drivers who had perfect driving records in order to obtain new insurance. But in resolving the issue of whether the respondent was motivated in discharging the drivers by the absolute necessity of obtaining new insurance or by a desire to rid itself of union drivers, I think it is fallacious to assume that because the realities of the insurance situation did not require the discharge of drivers with flawless records, that it therefore likewise did not require the discharge of drivers whose records were poor. Just as it is unreasonable to assume that insurance companies would have conditioned the issuance of new insurance upon the discharge of drivers whose accident records were good, so it is unreasonable to assume that insurance companies would have been willing to issue new insurance if the respondent retained in its employ those drivers whose accident records made the respondent a poor insurance risk. In my opinion, the respondent, faced with the necessity of dis-

missing those drivers whose accident records were poor, properly discharged them. I think it is a fair inference, however, that the respondent used this opportunity to rid itself of all other Pocatello drivers who were adherents of the Union and I concur in the result as to them.

Signed at Washington, D. C., this 25th day of February 1943.

GERARD D. REILLY

Member

National Labor Relations
Board

[Title of Board and Causes.]

Mr. Louis S. Penfield and Mr. Gerald P. Leicht,
for the Board.

Mr. Henry D. Moyle and Mr. David L. McKay,
of Salt Lake City, Utah, and Mr. A. L. Merrill,
of Pocatello, Idaho, for the respondent.

Mr. Delmar R. Peters, of Pocatello, Idaho, for the
Association.

INTERMEDIATE REPORT

Statement of the Case

Upon an amended charge duly filed by Teamsters, Chauffeurs, Warehousemen and Helpers, Local 983, A. F. of L., herein called the Union, in Case No. XIX-C-1071, and a charge duly filed by International Association of Machinists, Local No. 198, A. F. of L., herein called the Machinists, in

Case No. XIX-C-1082, and the National Labor Relations Board, herein called the Board, on June 6, 1942, acting pursuant to Article II, Section 36 (b) of the National Labor Relations Board Rules and Regulations—Series 2—as amended, having ordered that Cases Nos. XIX-C-1071 and XIX-C-1082 be consolidated, the Board, by the Acting Regional Director for the Nineteenth Region (Seattle, Washington), issued its consolidated complaint dated June 24, 1942, against Idaho Refining Company, Pocatello, Idaho, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the consolidated complaint, amended charge and charge, accompanied by a consolidated notice of hearing, were duly served upon the respondent, the Union, the Machinists, and the Idaho Refining Company Employees' Benefit and Labor Association, herein called the Association.

With respect to the unfair labor practices, the consolidated complaint alleged, in substance, that the respondent through its officers, supervisors, and agents: (1) at various times in and after March 1940, inquired of its employees and applicants for employment whether they were members of the Union or any labor organization and informed the employees that the respondent was opposed to its employees joining unions; advised an employee in

October 1941 that its truck drivers would be discharged if they joined the Union; about November 16, 1941, inquired whether employees of the Idaho Gas & Oil Company¹ were members of the Union and threatened discharge to those who were or became members of the Union; instructed truck drivers in November and December 1941 to present their grievances directly to management and not through the Union or any outside representation and indicated to the said employees that truck drivers employed prior to November 14, 1941, had been discharged because they sought representation by the Union; and in January 1942 transferred truck drivers from Baker, Oregon, to Pocatello, Idaho, instructing the drivers at the time of the transfer to refrain from engaging in union or concerted activities; (2) discriminated in regard to the hire and tenure of employment of 20 named individuals;² (3) on or about November 14, 1941, and

¹The complaint alleged that Idaho Gas & Oil Company was a wholly owned subsidiary of the respondent and under its direct supervision and control. A finding with respect to this allegation is hereinafter made.

²James Ayers, K. C. Brower, S. R. Burkholder, Guy Campbell, Edward Boyd Cornia, Howard Davis, Wayne Douglas, Victor Ellingford, John Evans, Leonard Fowler, Arthur Heckert, Henry Henrickson, Carl Hill, A. Stanley Merrill, R. E. Miller, John Ray, Leland Stanford, P. P. Stanger, and Myron D. Whitesides because of their membership in or activity on behalf of the Union, and Leo Archibald because of his membership in or activities on behalf of the Machinists, or his activities on behalf of the Union.

at other times thereafter, refused to bargain collectively with the Union as the exclusive representative of its employees in a unit appropriate for collective bargaining, although the Union on or about November 14, 1941, became and at all times thereafter has been the duly designated representative of a majority of the employees in such unit, by (a) discharging on November 14, 1941, all employees in the appropriate unit in order to avoid its obligation to bargain, (b) refusing on November 21, 1941, and at all times thereafter, to recognize the Union although advised of its majority representation, and refusing to negotiate or discuss with the Union a proposed agreement or the discharge or reinstatement of the truck drivers discharged between November 14 and 21, 1941; (4) about July and August 1938, dominated and interfered with the formation of and thereafter interfered with the administration of and furnished financial and other assistance to the Association; and (5) by these acts, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. On July 7, 1942, the respondent filed motions for extension of time within which to answer, to make the consolidated complaint more specific, and to continue the hearing. The Regional Director granted the motions for an extension and to continue the hearing but did not pass upon the motion to make more specific.

On July 11, 1942, the respondent filed its answer to the consolidated complaint, in which it admitted the allegations of the complaint as to the nature of

its business but denied that it had committed any of the alleged unfair labor practices. By way of affirmative defenses the respondent averred that it had terminated the employment of the individuals named in the consolidated complaint for specified reasons not connected with their union membership or activity, and admitted a refusal to bargain with the Union for the reasons that the Union failed, upon request, to furnish proof of its authorization and the respondent was under written contract with the Association, as the representative of its employees. Other affirmative defenses of the answer are considered below in a discussion of the issues raised by the pleadings.

Pursuant to notice, a hearing was held from August 3 to August 13, 1942, in Pocatello, Idaho, before the undersigned, the Trial Examiner duly *designed* by the Chief Trial Examiner. The Board and the respondent, represented by counsel, and the Association, by its representative, participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the outset of the hearing, the Board moved to amend the consolidated complaint to correct certain minor typographical errors therein and the respondent renewed its motion to make more specific. The former motion was granted without objection and the latter denied by the undersigned.

At the conclusion of the Board's case, the respondent moved to dismiss the consolidated com-

plaint for failure of proof and specifically as to employees Douglas, Brower, Henrickson, and Ellingford on the ground that there was no evidence as to their union membership, and to strike the testimony of employee Archibald on the ground that the respondent had no knowledge of his union membership. The motion to dismiss the consolidated complaint and specifically as against the individuals named above was denied, as well as the motion to strike the testimony of Archibald. The Board consented to have stricken paragraph V, subdivision 2, of the consolidated complaint for lack of proof.³ At the conclusion of the hearing, the undersigned granted without objection the motion of the Board's attorney to conform the pleadings to the proof, and reserved decision on the respondent's motion to dismiss which is disposed of in the manner hereinafter indicated. Oral argument, in which the Board and the respondent participated, was had on the record. Following the hearing, the respondent submitted a brief. Neither the Board, the Union, the Machinists, nor the Association filed briefs with the undersigned.

Upon the entire record thus made, and from his observation of the witnesses, the undersigned makes, in addition to the above, the following:

³Therein the Board alleged that in August or September 1941, the respondent, through Gilbert Moyle, its general manager, and Frank Copening, its secretary, advised an employee of the Idaho Gas & Oil Company at Mackay, Idaho, that it would not hire or retain in its employment truck drivers who belonged to the Union.

FINDINGS OF FACT

I. The business of the respondent

The respondent, Idaho Refining Company, is a Nevada corporation having its principal office and place of business at Pocatello, Idaho, where it employs approximately 90 employees. It is engaged in the refining of petroleum and crude oil and the manufacture of asphalt, and selling and distributing gasoline, oil, fuel oil, asphalt, and other products in the States of Idaho, Nevada, Utah, and Wyoming. During 1941, the respondent purchased for use in its operations raw materials and finished products valued at approximately \$1,328,000, of which approximately 90 percent was shipped to the respondent from sources outside the State of Idaho. During the same year the gross sales of the respondent amounted to approximately \$1,900,000, of which approximately 10 percent represented sales of commodities to points outside the State of Idaho.

A substantial portion of the products sold and distributed by the respondent are sold and distributed in Idaho by the Covey Gas & Oil Company of Idaho, its wholly-owned subsidiary, hereinafter called Covey, and the Idaho Gas & Oil Company, hereinafter called Idaho. At the time of the hearing, Covey and Idaho obtained all of their gasoline from the respondent. Covey and Idaho maintain their offices in the respondent's office building at Pocatello. In 1940, John N. Peterson and Arch Webb, treasurer and secretary, respec-

tively, of the respondent were president and secretary, respectively, of Idaho. Frank Copening, who succeeded Webb as the respondent's secretary, likewise succeeded to his office as secretary of Idaho, and in the spring of 1942, B. J. Albertson, the respondent's treasurer, became president of Idaho. The respondent has loaned Idaho approximately \$295,000 and exercises close control over its operations because of this debtor-creditor relationship. Individual owners of stock in the respondent corporation hold a similar stock interest in Idaho. Willard A. Sheppard, the respondent's manager at Boise, is likewise manager of Idaho's operations in that area and is paid by the respondent for acting in both capacities.

The relationship between the three corporations above referred to is such, and the officials of the respondent have so acted, as to constitute the respondent an "employer" within the meaning of that term as used in the Act, of the employees of Covey and Idaho.⁴

II. The organizations involved

Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, successor to Local No. 440,⁵ and International Association of Machinists, Local No. 198, both affiliated with the American Federation

⁴See *Bethlehem Steel Company v. N.L.R.B.*, 120 F. (2d) 641 (App. D. C.).

⁵In January 1942, Local No. 983, on action of the International Union, succeeded Local No. 440, whose charter was revoked.

of Labor, are labor organizations which admit to membership employees of the respondent.

Idaho Refining Company Employees' Benefit and Labor Association is a labor organization which admits to membership employees of the respondent.

III. The unfair labor practices

Synopsis of the chronology of the events

The respondent commenced refinery operations at Pocatello in the summer of 1938. The Association, presently in existence, was organized that fall on company property. Shortly thereafter it was granted a dues checkoff and other concessions. The respondent's officers and supervisors became members of the Association. In the fall of 1938, some of the respondent's truck drivers inquired about union membership and were told to decide the issue themselves. In June 1941, the Association and the respondent entered into an agreement fixing wage scales for all employees except the drivers. In the same month the drivers were placed upon a monthly wage scale of \$160. In September 1941, the drivers started to join the Union and by late October all but one had joined the Union. Their union membership was the subject of general discussion among the respondent's other employees.

On or about November 1, 1941, the Union undertook to draft a proposed contract which was submitted to the respondent on November 14. On November 10, the respondent received notice from its insurer of the cancellation, effective November 17,

of insurance covering the automotive equipment of the respondent, Covey and Idaho, due to frequency of accidents and an excessive loss ratio. On November 12 or 13, the respondent allegedly decided that in order to effectuate new insurance it would be necessary to discharge all of its truck drivers. On November 14, all of the truck drivers and one mechanic, also a union member, were discharged. On the morning of November 14, the Union presented its contract to the respondent, but no discussion of its various provisions was had and an agreement was made to meet again on November 21. The union representatives were not informed of the discharge of the truck drivers and they had no knowledge of this fact. At the second conference, held on November 21, the respondent refused to negotiate with the Union without proof of its majority designation, which proof, other than for oral assurances, was not submitted. On November 15 and 16, new truck drivers were hired, and on November 17 the respondent obtained new insurance for its equipment.

A. The Association

In the late summer or early fall of 1938, shortly after the respondent began operations at Pocatello, various employees expressed interest in organizing a union. George Hibbler, the respondent's chief and only chemist, together with George Mann, a helper on the cracking unit, became active in broaching the subject of organizing to other employees. About October the employees gathered together for their first meeting. Notice thereof

was passed around the plant and posted on a bulletin board, and the employees met in the refinery office. The meeting was attended by nearly all employees, including Kermit Rice, superintendent of transportation, Arch Webb, the respondent's secretary, Val Gaudet, then plant superintendent, and a large part of the clerical force. Mann presided and Hibbler spoke of the advantages offered by an inside union at his previous place of employment, mentioning such matters as sick and hospital benefits and a welfare fund. It was contemplated that membership would be open to all employees, including supervisors. At the meeting, the name Idaho Benefit Association was chosen. At the second meeting of the Association, held about a month later on company property, bylaws were adopted and officers elected.

George Mann, the Association's first president, was succeeded by A. V. Simpson, the yard foreman. At a later date, C. E. Henninger, foreman of the loading dock and one who, clearly in addition to other supervisory duties, exercised authority to hire and fire employees, was elected Association president. Henninger, late in 1939 or early 1940, suggested a change in the Association's name by adding the word "Labor" to the title in order, according to the witness, Haskell Duncan, to comply with the Act and make the Association a "bona fide" labor organization.

Following its inception, the Association met regularly in the respondent's offices. Commencing in the spring of 1940, the Association transferred its

meetings to the employee change house which had been built on company property at the suggestion of the Association, the respondent furnishing the necessary material and the employees the labor, to construct the building. About January 1941, after a decline in membership attendance at meetings, control of the Association passed, by constitutional change, to its Board of Directors, which carried on Association affairs between annual or special meetings. Simpson, the yard foreman, was president of the Association when this decision was made. The Association's directors met monthly in the change house.

In addition to the supervisors mentioned above, the following officers of the respondent were members of the Association during their tenure with the respondent: Arch Webb, the secretary; Frank Copening, Webb's successor as secretary; John H. Peterson, treasurer and president of Idaho; and B. J. Albertson, Peterson's successor as treasurer. In June 1942, the following supervisors were Association members: C. E. Henninger, truck dispatcher and superintendent of the loading dock; Kermit Rice, superintendent of transportation; E. V. Smith, plant superintendent; A. V. Simpson, yard foreman; and G. L. Farnsworth, chief chemist. The activity of some of the supervisors was not confined solely to mere membership and payment of dues to the Association. As indicated above, Simpson served at least one term as the Association's president. Haskell Duncan, while night superintendent in 1940, served as a member of the

Association's safety committee. At the annual meeting of the Association held on February 13, 1942, 22 members were present, including supervisors Smith, Simpson, Farnsworth, and Henninger. Minutes of the meeting introduced in evidence indicate that these supervisors voted for new officers and an amendment empowering the Association's directors to amend the bylaws respecting hospital benefits. Henninger was chairman of the nominating committee reporting to the meeting.

In May 1939, the respondent was placed on the unfair and nonpatronage lists of the Pocatello Building Trades Council and the Pocatello Central Trades and Labor Council. In September, like action was taken by the Idaho State Federation of Labor. In an attempt to adjust its differences with these bodies in the fall of 1939, Webb and Peterson sought a conference with August Rosqvist, the secretary of the State Federation of Labor. Rosqvist informed Webb and Peterson that their differences could be composed if the respondent employed union labor on its construction work and union truck drivers. At the conclusion of the conference Webb invited Rosqvist and Thomas Brandt, secretary of the Central Trades and Labor Council, to address a gathering of the respondent's employees and explain the benefits of trade union membership. Thereafter, a meeting of the respondent's employees was held on company property. Aside from a decided conflict on one point, a summary of all testimony regarding this meeting reveals that George Mann, who was or

had been the Association's president, presided at the meeting and that Webb introduced Rosqvist and Brandt as A.F. of L. representatives who spoke and answered questions of the assemblage. Rosqvist explained how employees could join the A.F. of L. and truck drivers the Union. Webb and Peterson, both Association members, were present while Rosqvist and Brandt spoke. The conflict above mentioned arose over the question of whether Webb and Peterson left the meeting with Rosqvist and Brandt upon completion of their remarks and whether at some time during the course of the gathering, Webb indicated by his remarks the respondent's hostility to unions and favor of the Association. With respect to the latter point, Anderson, an Association member, testified as follows:

Well, he [Webb] told us that he wouldn't advise us to join the union, or not to join it. He just left it up to us, whether we wanted the union or whether we didn't. . . . Well, he said that he didn't think that a Union would do anything for us that the company wouldn't do.

Webb denied any remarks indicating that the respondent would match any benefits obtained through organization, testifying that he advised the employees that union membership was a matter for them to decide. Copening corroborated Webb's testimony. The undersigned is satisfied, upon review of all credible testimony concerning this meeting, that Webb and Peterson left the meeting with Rosqvist and that Webb did not make the remarks attributed to him by Anderson. At the close of the

meeting, those present, at someone's suggestion, decided by a vote of about 40 to 2 to reject union affiliation.

In addition to the respondent's support of the Association by reason of officers' and supervisors' membership therein, the Association realizes a steady profit from concessions that it operates on the respondent's property. Vending machines owned by the Association dispense soft drinks and the boiler house fireman sells cigarettes to the employees. The Association also maintains a laundry service for the employees operated from company property. Deductions for concession purchases are handled in the following manner: the Association's secretary-treasurer prepares a list of employee debts for deduction from the pay check of the employee for any credit which the Association has extended for the purchase of soft drinks, candy cigarettes, gasoline,⁶ and the laundry service. Usually this

* ⁶Considerable testimony was adduced concerning a meeting of the respondent's employees held in the spring of 1940, at which it was alleged Henry D. Moyle, the respondent's vice president and general counsel, advised the employees that it would arrange for Association members only a discount on gasoline purchased at a local Covey service station. Duncan testified: "It runs in my mind that it was members of the Association," who were to get the discount through Covey. The testimony of the respondent's witnesses in refutation of the Board's contention that the discount was restricted to Association members is persuasive to the contrary. The undersigned is satisfied and finds, on the basis of this testimony, that the meeting was called to ac-

work is done after office hours, but occasions do arise when part at least of the secretary's calculations take place on company time.

Before each pay day, Carlson turns the record of pay-roll deductions over to the pay-roll clerk and, on the basis of Carlson's figures, the clerk deducts all debits, including Association dues of 50 cents a month in the case of Association members only, from the pay check.⁷ Thereafter, the pay-roll clerk hands the Association's secretary the respondent's check for the total of all deductions made. The amount checked off for dues is deposited in the Association's hospital benefit fund.⁸ Any profit re-

quaint all employees of the possibility of their securing FHA loans to aid in financing home building; that the respondent indicated its willingness to assist home builders in the matter of securing discounts on building materials as well as gasoline, and it cannot reasonably be inferred that all or any of the proffered help was to be restricted to Association members. None the less, it appears clearly from the testimony of P. W. Carlson, the Association's secretary-treasurer, that when an employee signs an Association application card, Carlson furnishes Covey the name and automobile license number of the applicant so that he may secure his gasoline discount. How or who makes similar arrangements, if any, in the case of a non-Association member is not clear.

⁷Dues of Covey and Idaho employees who are Association members are likewise checked off.

⁸This would include, of course, the checked-off dues of the respondent's officers and supervisors such as Webb, Copening, Smith, Henninger, and others.

maining after payment of the cost of operating the concessions is deposited in the Association's welfare fund. For the period October 1-16, 1941, pay-roll deductions, including dues check-off for Association members, candy, drinks and laundry, totalled \$128.87. For the period June 1-15, 1942, deductions for these items equalled \$187.13. The dues check-off inaugurated in 1938 is pursuant to authorization given the respondent at the time the employee applies for membership in the Association. Gilbert Moyle was unable to state who on behalf of the respondent agreed to furnish this privilege to the Association. He readily admitted that when the dues check-off was started the respondent assumed that the Association represented a majority of the employees. Association bylaws, adopted February 1941, provided that the respondent pay to its secretary "once each month the total amount of dues collected from the members." Authorization for deduction of concession purchases is not written but is handled by arrangement between the respondent and the Association.

In May 1941, some of the employees expressed dissatisfaction over their wages and decided to seek increases. Some of the still operators circulated a petition upon which each employee was asked to state the hourly wage he was then receiving and the wage he was demanding. Delmar Peters, the Association's president at the time, testified that the petition was not Association inspired, "but it fell into that category shortly after." The respondent's drivers were not asked to sign this petition, because

the employees instrumental in circulating the petition "didn't know anything about driving a truck or anything like that." The petition was handed to a committee consisting of Peters, John Anderson, Max Pope, and Kay Mills. Peters presented the proposed wage scale to W. M. Miller, then plant superintendent, asking him to present it to Gilbert Moyle and to secure an appointment for the committee to meet with Moyle. About 10 days later Moyle informed Peters, through Miller, that he would meet at an agreed time to consider the proposed wage scale. Thereupon, Peters posted a notice for a meeting of the Association to be held on May 21 in the refinery office. At the meeting, Moyle offered the respondent's proposed hourly wage scale, which was less than the demands of the workers. The employees voted to accept it and, at Moyle's suggestion, to incorporate the scale in an agreement between the respondent and the Association. Some truck drivers who were present asked Moyle why the wage scale did not cover them and were informed that the matter of adjusting their wage rates would be considered later.⁹ Following the meeting, a local attorney drafted an agreement incorporating the respondent's wage scale. It was thereafter signed

⁹Following the execution of the above agreement, the drivers conferred with Gilbert Moyle, John Peterson, Rice, and Henninger. They were told that due to the fact that some of the respondent's trucks crossed State lines, it would be necessary, under rules of the Interstate Commerce Commission, to place the drivers on a monthly wage. This wage was fixed by the respondent at \$160 a month.

by officers of the Association and presented to the respondent for the signatures of its president and secretary.

This agreement, effective June 1, 1941, for a period of one year, established new hourly wage scales for 12 categories of refinery employees, with provision for time and one-half for all overtime. The agreement did not include an hourly wage scale for truck drivers. It is significant that the Association was not asked to prove its majority representation, the respondent accepting oral assurances that this was the fact, and Gilbert Moyle assuming, as he testified, that Peters had authority to represent the Association. Further, although there is no express recognition of the Association in the agreement, as the employees' exclusive representative, the agreement did by its language intend to fix with the Association "a certain definite, designated wage scale for the employees" of the respondent. In effect, the Association was accorded the recognition of an exclusive bargaining agent.

In May 1942, the employees again were asked to set down on paper the hourly wage rate which each thought he was qualified to receive. Peters testified that he personally contacted every Association member except the truck drivers and mechanics concerning a new hourly wage rate. Through the instrumentality of Smith, plant superintendent at this time, Peters arranged for the Association's committee to meet Gilbert Moyle, who agreed to consider the matter and confer again with the committee. A few days later, Moyle presented the respondent's

counter-offer. In the absence of a quorum¹⁰ at the Association meeting, called to consider the counter-offer, the matter was referred to its Board of Directors for official action. At its meeting, it was voted to accept the respondent's wage scale and to incorporate it in a new six-months agreement which was copied from the 1941 agreement. Except for pertinent dates and the hourly wage scales, the 1942 agreement was an exact copy of the 1941 agreement. Gilbert Moyle, as in 1941, accepted Peters' assurance that the Association represented a majority of the employees.¹¹ The agreement was thereafter executed by officers of the Association and by Gilbert Moyle and Copening, effective on June 1, 1942, for a period of 6 months.¹²

Concluding findings with respect to the Association

From the very inception of the Association, the respondent displayed an interest in its affairs. The first Association meeting held on company property was attended by at least three important supervisory officials. Thereafter, officers of the respondent and its supervisors became members of the Association. Two supervisors, Simpson and Henninger, were

¹⁰A quorum consisted of 15 members.

¹¹It seems reasonably clear that a majority of the employees, including drivers, belonged to the Association.

¹²The agreement as executed contained a wage rate of 60 cents per hour for truck drivers. Presumably this was for extra-board drivers, for at this time regularly employed drivers received \$175 a month.

elected Association presidents and Henninger, as indicated above, was otherwise active. In February 1942, four supervisors attended the annual meeting, voting for the election of Association officers and a proposed change in the bylaws. As late as June 1942, the dues of the respondent's officers and supervisors were being checked off and turned over to the Association. At no time did the respondent attempt to stop or limit in any way the action of the supervisors in any of the Association's affairs, and they assumed complete freedom of action at all times. The non-supervisory employees were never informed of any limitation upon the authority of the officers or supervisors whom they considered to be the respondent's representatives and whose actions conformed to the pattern established by the respondent. That such a relationship between an employer and a labor organization soon develops on the part of employees a reliance and dependence on the employer rather than the labor organization as the employee representative, is revealed in this case by the overwhelming vote of confidence given the Association in the vote conducted on company property following the address of Rosqvist. It can hardly be asserted that this vote afforded employees an opportunity to fairly consider the relative advantages and disadvantages of trade union versus Association membership.

Of equal significance is the substantial financial assistance rendered the Association from the dues payments of the respondent's officers and supervisors. Regardless of reasons advanced by the

respondent for its officers joining the Association, this, nonetheless, is financial support of the Association. Of further significance in considering the question of financial support is the substantial group of concessions which the Association operates on company property with the respondent's assistance. The deductions for employees' purchases from concessions, together with the dues check-off, completes the picture of material financial aid given the Association by the respondent.

Indicative of the respondent's attitude towards the Association is the recognition accorded to it in executing the 1941 and 1942 agreements. No inference is intended that hard bargaining is always the hallmark of a free and independent labor organization, but the respondent's attitude towards the Association revealed in these dealings is so markedly different from that imparted to the Union in November 1941 as set forth below, as to indicate the respondent's favor of the Association and opposition to the Union.

The respondent urges that its afore-mentioned activities did not constitute unfair labor practices because Association members testified that they were not coerced into joining the Association and did so of their own free will. In support of its contention, the respondent points to the testimony of Peters that the employees desire to be represented by the Association. The undersigned rejects this contention as being without merit. The real question for determination is whether the acts of the respondent constituted interference with, restraint, or coercion of its employees in the exercise of rights guaranteed

in Section 7 of the Act. Evidence concerning the effect or lack of effect of the respondent's acts on particular individuals is clearly not decisive of this issue. The reasonable inference is that the anti-union conduct of an employer does have an adverse effect on self-organization and collective bargaining.¹³

From the foregoing, notwithstanding employee assertions relied upon by the respondent, the undersigned finds that, since 1938, the respondent interfered with, supported, and dominated the formation and administration of the Association; and that the respondent, by such conduct and by its entire course of conduct, interfered with, restrained, and coerced its employees in the exercise of the rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining, as guaranteed in Section 7 of the Act.¹⁴

B. Interference, restraint, and coercion

The respondent's decision in June 1941 to place its Pocatello drivers upon a monthly wage basis was the cause of dissatisfaction among the drivers. By the middle of July the drivers had determined that

¹³See *Matter of Grower-Shipper Vegetable Ass'n and Fruit and Vegetable Workers' Union of California*, No. 18211, 15 N.L.R.B. 322, enf'd as modified N.L.R.B. v. *Grower-Shipper Vegetable Association*, 122 F. (2d) 368 (C.C.A. 9).

¹⁴N.L.R.B. v. *Link-Belt Co.*, 311 U.S. 584; N.L.R.B. v. *Automotive Maintenance Machinery Co.*, 62 S. Ct. 608, rev'g 116 F. (2d) 350 (C.C.A. 7).

shift responsibility to other supervisors. The undersigned finds that Gilbert Moyle made the statements attributed to him by McBride and Cornia, thereby conveying to the drivers the respondent's opposition to the Union.

When Stiff's trucks were transferred to Pocatello in January 1942, the drivers, including McBride, were stationed at Gooding, Idaho. McBride testified that about January 12, 1942, Stiff told the drivers that Gilbert Moyle informed him that the drivers, upon transfer, were not to discuss union affairs or to associate with the Pocatello drivers "in that capacity"; that the respondent had experienced "trouble with the laborers in the Union capacity" and did not want this to occur again. Stiff did not testify and Moyle was not questioned concerning this incident except to deny generally that he had attempted to discourage membership in "Teamsters Local 440 or 983." The undersigned finds Stiff to have made the remarks.

Leo Archibald, a truck mechanic and member of the Machinists, was active in assisting the drivers to enter the Union by distributing application cards and collecting their initiation fees and dues. He testified that, about November 1, his foreman, Kermit Rice, who at one time had been a member of the Machinists, remarked that trade union membership had never benefited him. Rice denied Archibald's testimony. About 9:30 on the morning of November 13, James Ayers, one of the drivers, was about to depart from the refinery with a loaded

tank for Jerome, Idaho. He testified that, just before leaving, Rice came up to him and remarked that he had heard "the boys joined the Union," and inquired what it was the drivers wanted. According to Ayers, he acknowledged that the drivers had joined the Union and answered that they were going to present a contract demanding a monthly wage of \$185 and a guarantee of \$100 a month for extra-board drivers.¹⁷ With respect to this Rice testified first that he did not think he had any such conversation and then denied Ayers' testimony. Arthur L. Heckert testified as follows concerning a conversation he is alleged to have had with Rice at the time he was hired in 1940: "Well, he asked me if I belonged to any union, and I says 'No.' and he says, 'Well, that is okeh.' He said 'Mr. Moyle is strictly against union.' " On cross-examination Heckert vigorously affirmed his previous testimony. Rice admitted that he talked to Heckert but denied that he made any remarks concerning Gilbert Moyle, unions, or that he inquired of Heckert's union membership. The demeanor of Ayers and Heckert impressed the undersigned. There is a consistent pattern of interest in the union membership of the men Rice had authority to hire and fire, as shown by the testimony of Archibald, Ayers, and Heckert. The undersigned was not favorably impressed by Rice's demeanor or bearing as a witness and finds that he did make the statements sub-

¹⁷Extra-board drivers are those who work when regular drivers are not available or otherwise engaged.

stantially as ascribed to him by these three witnesses.

On November 14, the respondent discharged all of its Pocatello drivers, under circumstances more fully described below, and at once undertook to secure new drivers for its trucks. Trevor Moss applied to Rice for a job as a driver on the afternoon of November 15. At the completion of a test run Moss went to the respondent's office. Moss testified that there he found Gilbert Moyle, Copening, and Rice; that Moyle asked him if he belonged to any union, to which he replied, "no"; and that Moyle then said: "We have our own union and own organization out here in the company," which the employees were free to join. Gilbert Moyle testified that he was in and out of the office while Moss was interviewed, but denied talking to Moss, questioning him about union membership, making any remarks about the Association, or that anyone in his presence asked Moss if he belonged to a union. Rice denied that the question of union membership was discussed in his presence by Moss, Moyle, or anyone else. Finally, Copening testified that it was his recollection that only he and Rice were present; that he interviewed Moss and questioned him concerning his marital status, driving experience, and work habits. Clearly, Moyle's partial presence at the interview gave rise to the opportunity to make the comments he is alleged to have passed. Rice and Copening denied that they questioned Moss concerning union membership, but Moss did not testify that they did. Moss pinned responsibility solely upon Moyle. In this respect the alleged

remarks are consistent with Moyle's remarks to McBride as found above and with the true cause, as hereafter found, for the discharge of all drivers on November 14. The undersigned finds that Gilbert Moyle questioned Moss concerning his union membership and expressed approval of the Association as the respondent's "own organization."

Merlin Bowman was also give a test run and hired as a driver on either November 16 or 17, 1941. He testified that during his interview by Copening concerning his previous experience and habits he was asked if he belonged to a union. Copening admitted an interview with Bowman, that it was concerned with his experience and habits, and that he asked Bowman if he had filed out an application for employment blank which asked, inter alia, the "Lodge Affiliation" of the applicant. He denied asking Bowman if he belonged to a labor union. The undersigned credits Bowman's testimony and finds Copening did question him concerning his union membership.

Roy Williams was hired by Gilbert Moyle to work for Idaho at Boise. Williams voluntarily quit in May 1942, because of differences with his foreman, W. A. Sheppard, who was the respondent's district manager and also manager of Idaho at Boise. Williams, a non-union member, testified that on November 13, Sheppard telephoned him at his home and inquired if Williams knew where Sheppard could hire truck drivers to go to work

at the Pocatello plant the next day. Williams told Sheppard that he did not know of any drivers. He was again asked the same question by Sheppard the next day in the Boise office. On November 16, Sheppard came to Williams' home and wanted to know if Ray Pittman and Mervin Zollman, Williams' co-drivers, were union members. Williams replied that he did not know and, upon being requested to find out, refused to do so. Sheppard then, according to Williams, said that if they had joined the Union that he [Sheppard] would use two recent accidents they had been involved in as an excuse to fire them. Sheppard admitted that he telephoned Williams to ascertain the names of two drivers to refer to Gilbert Moyle, following a telephone conversation with Moyle on November 13, wherein the latter informed him that he was going to discharge all of the Pocatello drivers. Sheppard, denied any conversation with Williams on November 16, or inquiry concerning the union membership of Pittman and Zollman. He testified that for some unknown reason Williams was embittered against him and the respondent. He admitted, however, that he had at one time been on friendly terms with Williams and visited his home on at least two occasions. There is no evidence that whatever feeling later developed between the men existed on November 13. Sheppard admittedly sought his help on that day. It may reasonably be inferred that the subject of the requested help was a matter of further discussion on November 16 and that, because of the friendly relation between the men at the time. Sheppard made the

remarks attributed to him. The undersigned so finds.

The respondent urges that, even assuming these statements to have been made by its supervisors, they were sporadic, mere expressions of opinion, and not intimidatory in fact because union drivers were hired following the utterance of these remarks. That they were sporadic is not significant when consideration is given to the fact that some of the comments were made to drivers, then attempting to organize, by responsible agents who exercised hiring and firing authority over them. Nor can the contention that the statements were mere expressions of opinion have validity when the utterances are placed in juxtaposition to the totality of events occurring at this time. What might otherwise be a harmless expression of honest personal opinion takes on a different color, when uttered to or overheard by an employee who joins a union to better his working conditions, or is made during controversy between employees and employer over the former's rights to self-organization. It was the respondent's entire course of conduct during the period in question, as well as the statements made by its supervisory employees, that had this coercive effect. Their views about the Union merged into and were only a part of respondent's total conduct designed to forestall the Union.¹⁸

¹⁸See *N.L.R.B. v. Virginia Electric and Power Company*, 314 U.S. 469. See also the language of Learned Hand, Circuit Judge, in *N.L.R.B. v. The Federbush Co., Inc.*, 121 F. (2d) 954 (C.C.A. 2).

The undersigned concludes and finds that the respondent through its agents, by interrogating employees about the Union and union activities; by expressing a preference for the Association as its "own organization"; by threatening directly and indirectly employees with termination of employment because of membership or activity in the Union, which it opposed, and by the totality of such conduct and action, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The undersigned makes no finding based upon the testimony of R. E. Miller that on March 9, 1942, Miller was offered a job as truck driver by Henninger and then asked "how he stood with the union." The undersigned is satisfied, based upon Henninger's testimony, that the remark was a natural one made upon circumstances which reasonably induced the question. In December 1941, Henninger had offered Miller a job on the loading dock and Miller had refused, on advice of the Union. This he told Henninger. It seems understandable that, once having refused a job because of union advice, when next offered a job Henninger would want to know whether the same advice still barred acceptance.

C. The discriminatory discharges

1. Leo Archibald

Archibald was first employed by the respondent as a truck mechanic and welder on January 25, 1941. His duties included the general repair and maintenance of trucks and trailers and the welding and

repair of transportation tanks. Archibald started at 50 cents an hour and about March 1, 1941, his hourly wage was raised to 60 cents. He joined the Association in January 1941, and signed an application card in the Machinists in September 1941.

Archibald talked to the drivers concerning the Union and discussed with them ways and means of bettering their working conditions. He took some drivers and Oran Thomas, another mechanic, to Rosqvist's home, where they signed application cards and later, at Rosqvist's request, collected initiation fees and dues from drivers and machinists. A. Stanley Merrill testified that Archibald spoke to him on a number of occasions about the Union and that he "might have been" influenced by Archibald's efforts in this regard. Archibald was never questioned by the respondent concerning his own union affiliation, but Rice did ask him about the affiliation of the drivers. Although Rice and Gilbert Moyle denied any knowledge of Archibald's union membership or activities, their denial is unworthy of belief and it is a fair surmise, in view of the other circumstances of the case, that Rice, at least, was aware of his union membership. In a small plant like the present one it is a reasonable inference that knowledge of Archibald's extensive union activities came to the notice of higher management officials.¹⁹

The Board alleged that Archibald was discharged on November 14, 1941, because of his membership

¹⁹N.L.R.B. v. Abbott Worsted Mills, 127 F. (2d) 438 (C.C.A. 1).

drink intoxicating liquor and he testified that at no time during his employment did he specifically speak to or caution Archibald about this habit.

Archibald admitted that he would take a drink occasionally, and had been drunk on occasions, but denied drinking on the job or appearing for work in a drunken condition. He attributed his illnesses and relapses complained of by Brown and Rice to stomach ulcers for which he had previously been under medical treatment. He also admitted that Rice had complained about the welding job and that he was once criticized for slowness; that he did absent himself from work on three or four days due to illness and on another occasion for personal reasons; and that on Monday, November 10, he did report for work, felt ill, and asked for and received permission to go home. Although Rice testified to the contrary, Archibald admitted that on one occasion Rice told him he would have to let whiskey alone if he wanted to work; that he thought Rice was joking and told him to fire him if he ever came to work drunk.

Archibald's working hours averaged 9 to 9½ hours a day, including Sunday, during the period of his employment. The mechanics were off duty two Sundays a month, and when they accumulated overtime above 40 hours were accustomed to take off a day, combining it with Sunday, without asking permission. This fact partially explains Archibald's 37 absences, including 25 Sundays, over a period of about 10 months. Brown, during the same period, was absent 13 days, including 9 Sundays,

and, because of his seniority and ability, was accustomed to work more Sundays than the other mechanics. Between June 1 and August 23, 1941, mechanic Boyer was off-shop 16 days, including 10 Sundays, and mechanic Thomas was absent eight days, including five Sundays, between September 3 and November 13. According to Archibald's uncontradicted testimony, he was absent only once without permission. Thus, on a comparative basis, the record of Archibald's absences alone is not persuasive as grounds for dismissal.

On coming to work on Friday, November 14, Archibald changed clothes, unlocked his tools, and Rice told him for the first time of his discharge. He testified that, on inquiry as to cause, Rice replied, "for getting drunk and laying off work." Archibald asserted that he laughed at this rejoinder and remarked that both men "knew what it was about." Rice testified, on the contrary, that he "explained that our work had slowed up considerably, and that his work was unsatisfactory and that I just wouldn't need him any more," and Archibald accepted this statement. He denied any statement about Archibald's drinking. The undersigned accepts Archibald's account of what was said to him on November 14.

Gilbert Moyle testified that he asked Rice about November 1 why he continued to put up with Archibald's conduct and Rice replied that, as soon as the work then on hand was completed, Archibald would be fired. Rice testified that he made up his mind to discharge Archibald on Monday, November 10,

when Archibald "came out and couldn't work." Why judgment to discharge was not exercised on November 10 and why Archibald continued to work until November 14 is not satisfactorily explained. Although it may be true that by November 13 Archibald had completed a specific work assignment, the overall picture of the respondent's operations indicates rather clearly that work in the garage continued unabated after that date. Brown testified that the garage "had all the work we could handle" at this time. The undersigned is not convinced or persuaded by the testimony of Rice that the decision to discharge Archibald was reached on November 10.

It is the undersigned's considered judgment that although Archibald's absences, ability as a worker, and illness, whether caused by ulcers or drink, may have contributed in part to his discharge, the underlying motive and real cause for the respondent's discharge of Archibald on November 14 is found in his union activities and the union membership of the drivers with whom he was so closely identified. The incidents of allegedly reprehensible conduct cited by the respondent as justification for Archibald's discharge occurred several months, except for his absence on November 10, before his discharge. With respect to this latter occasion the evidence is conflicting and contradictory as to the reason for Archibald's absence, Rice concluding from Archibald's appearance that he had been drinking. To the undersigned it is reasonably apparent that resurrection of these various incidents was an attempt to

“justify * * * discharge in retrospect, and that they did not motivate his dismissal.”²⁰

The undersigned finds that Archibald was discharged because of his union membership, more particularly his activities in behalf of the Union and because of his close association with its members, and that by thus discharging Archibald, the respondent discriminated in regard to his hire and tenure of employment, and thereby discouraged membership in the Machinists and the Union, and terfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. The truck drivers at Pocatello

Sequence of events

The respondent had an extensive fleet of automotive equipment for the distribution of its products, including passenger cars, light and heavy gasoline trucks, trailers, and semi-trailers. On August 22, 1940, the Firemen's Insurance Company of Newark, New Jersey, and The Metropolitan Casualty Insurance Company of New York, both hereafter called the Insurance Company, issued a joint policy FM 199, extending protection on this equipment against losses due to fire, theft, property damage, personal liability, and collision. The same policy also covered the automotive equipment of Covey and Idaho, because, in the words of Decker Little, branch manager of the Insurance Company, all three corpora-

²⁰Beckerman Shoe Corporation of Kutztown and United Shoe Workers of America (C.I.O.), 43 N.L.R.B., No. 75.

tions "were so closely interwoven." Not only vehicles driven by the respondent's truck drivers at Pocatello were thus covered, but also the vehicles, passenger and truck alike, driven by any agent of the respondent, Covey, and Idaho.

According to Little, between August 1940 and August 1941, the Insurance Company suffered disastrous losses on its policy FM 199, the loss ratio exceeding 100 percent of the allotted premium.²¹ In July 1941, the Insurance Company was loath to renew but, after conferring with the respondent, did so in the hope "that the line would not continue to show a loss ratio." Accordingly, on August 22, 1941, R. S. Turner, an authorized agent of the Insurance Company at Pocatello, issued a renewal policy, FM 227, continuing the coverage over the automotive equipment of the respondent, Covey, and Idaho.

²¹The record discloses the following losses paid on this policy:

Date	Driver	Loss
Dec. 11, 1940	Henry Henriksen	\$ 298.53 property damage
		2000.00 public liability
May 15, 1941	Boyd Cornia	2500.00 public liability
June 10, 1941	Fred Pearson	299.00 collision
		1250.00
August 15, 1941	Hollis Walker	25.10 property damage

Henriksen and Cornia were drivers on the respondent's Pocatello pay roll. Pearson was a "lessee account" at Challis, Idaho, and the loss was on a 1941 tank truck belonging to the respondent. Walker was either an agent of Covey or Idaho and covered under the blanket policy.

The respondent's accident experience under the renewal policy showed no signs of improvement. Between August 31 and November 5, 1941, the Insurance Company paid on 13 claims arising out of accidents.²² The respondent was aware of these accidents, as well as those experienced under its older policy. From time to time during the life of the older policy it had made desultory attempts to reduce its loss ratio by holding meetings at which

²²The date of accident, driver involved, and loss is shown in the table below:

Date—1941	Driver	Amount of loss
August 31	Conrad	\$ 7.00 property damage
Sept. 6	Ellingford	112.50 “ “
Sept. 12	Whitesides	50.00 “ “
		1044.10 collision “
Oct. 4	Zollman	90.35 property “
Oct. 16	Douglas	90.40 “ “
		1926.00 collision “
		52.55
Oct. 22	Crawshaw	26.45 property “
Oct. 24	White	215.00 “ “
		249.04 collision “
Nov. 5	Patterson	625.00 “ “
Oct. 24	White	315.00 “ “

[Turner, who testified concerning these claims, was unable to state with clarity whether the driver involved in this latter accident was White or Whitesides.]

Ellingford, Whitesides, and Patterson were on the Pocatello pay roll; Douglas worked under Stiff at Baker, Oregon. The other drivers mentioned above drove the respondent's equipment, or that of Covey and Idaho, at places other than Pocatello.

the drivers were urged to exercise more care in driving. These meetings, according to Rice, were held "just at random" and it is clear from all the evidence that the respondent did not undertake in an organized and systematic way to fashion a safety program to which its drivers had to adhere.

On October 27, 1941, Little wrote the respondent insisting that it do something to reduce its accident frequency and losses, and threatening to cancel upon the occurrence of another loss. This letter was never answered by the respondent. Ayers, a driver, heard that the respondent received this letter and was aware of the threat to cancel on the next occurrence of a major accident.

On November 5, Patterson, a driver, was involved in a collision on which the Insurance Company paid a claim of \$625.²³ On November 8, Little called upon Gilbert Sheets, the respondent's president, in Salt Lake City and informed him that he was forced to cancel policy FM 227. Sheets thereupon informed Gilbert Moyle of this fact. On Monday, November 10, Copenig at Pocatello received telegraphic notice of cancellation, effective as of noon, November 17.²⁴ Little testified that the policy

²³He was discharged prior to November 14, because of this accident.

²⁴This finding is based upon Copenig's testimony. Gilbert Moyle testified he received the telegram and showed it to Copenig. The telegram read as follows:

Due to High Loss Ratio Experienced On
Equipment Owned By Your Corporation For
Past Few Years We Are Cancelling Off Policy

was cancelled at the election of the Insurance Company because "the frequency of collision claims and property damage claims" had practically wiped out the premium charges set up to cover losses. In cancelling the policy the Insurance Company made no attempt to segregate losses attributable to the respondent's drivers as distinguished from those caused by Covey or Idaho.²⁵ Following receipt of the telegram on the 10th, Gilbert Moyle and Copening discussed the situation and quickly came to the decision that the respondent's trucks could not operate without new insurance. Between November 11 and 13, they did not effectuate new coverage.

Sheets, was also an officer of E. L. Sheets Company, of Salt Lake City, an insurance broker, and

FM 227 By Registered Cancellation Notice to Be Effective November 17, 1941, Noon Standard Time. Please Make Other Arrangements For Insurance.

²⁵Turner testified that the major losses were caused by collisions due, according to adjusters' reports, to the negligence of drivers. The respondent asserted that its accidents were caused by negligence on the part of the drivers occasioned by excessive speed in driving. The true cause for all or a majority of the accidents need not be determined by the undersigned, for none of the drivers here involved was discharged for any alleged negligence in the use of the respondent's equipment. This latter statement is subject to the following qualification: The respondent urges it discharged Wayne Douglas for an accident on October 16, 1941. The case of Douglas is considered separately below.

had engaged in the general insurance business for about 20 years. On the morning of November 12, he and Henry Moyle held a conference at which they discussed the cancellation of the policy and the situation of the drivers. According to the testimony of both Sheets and Henry Moyle, after a lengthy conference and consideration of all factors raised by the cancellation, it was there decided, without consultation of Gilbert Moyle, that the only way to secure a new policy by November 17 was to discharge all of the drivers. According to Sheets, the decision to discharge all drivers was for the reason that, “. . . there were so many of them, and you couldn't pick one or two out of the bunch, because it wasn't one or two but a majority of them, . . .;” and the discharge of all would be convincing evidence that the respondent was “serious in trying to get a decent loss ratio.” According to Henry Moyle, he and Sheets, “came to the conclusion that without the discharge of our drivers, we would not be able to get anybody to consider the re-writing of our insurance.” He testified further that Sheets informed him every possible insurance agency had been contacted, that at the time no favorable reply had been received and “nothing short of a complete change—definite change—in our set-up would be sufficient to put us in a position where any of the companies would consider us,” and since neither the equipment nor job to be done could be changed, they “came to the conclusion that there was only one thing that could be changed, and that was the drivers.”

Quite aside from the rule of the Interstate Commerce Commission requiring insurance for interstate carriers, or the respondent's inability to provide insurance as a self-insurer, it is appropriate to consider certain other factors, including available evidence covering the experience and driving records of the Pocatello drivers.

Sheets and Henry Moyle knew of the losses which the respondent had incurred and both were familiar with the insurance problem created by these losses. Both men previously had never hired or fired any employee at the refinery, and yet allegedly made their decision on November 12 without consulting the plant personnel directly in charge of operations. It is undisputed that in reaching this important decision neither man had before him the individual record of any driver as to his driving experience and accidents or made any attempt to limit the effect of their decision to only those drivers responsible for losses. Sheets was aware of the fact that some of the accidents were caused by drivers employed by Covey or Idaho and that many of the Pocatello drivers had never had an accident. He testified that he assumed without inquiry that the substantial losses involved transport trucks driven by Pocatello drivers and made no attempt to segregate any loss caused by drivers of Covey or Idaho because they were not "the main offenders." That there is no basis for any such over-all assumption is shown by the loss under the previous policy incurred by Pearson, an Idaho employee, involving \$1549.00. Henry Moyle

testified that the respondent's application for insurance only received serious consideration after the discharge of the drivers. There is no evidence that any insurance company required as a condition to the issuance of a policy the discharge of all the drivers employed prior to November 14. Furthermore, there is no adequate explanation why the discharge of drivers never involved in any accident would cause the respondent's application for insurance to receive more serious consideration. Additional light is thrown upon the decision of Sheets and Henry Moyle by examination of the driving records of the discharged drivers. Ayers, Brower, Campbell, Hill, Davis, Heckert, Ray, Stanford, and Miller never had an accident during the period of their employment. Evans and Fowler were involved in slight accidents where the question of fault is an open one. Cornia was absolved of blame for a serious accident, and five men, Hendicksen, Whitesides, Merrill, Ellingford, and Burkholder were involved in serious accidents. Copening and Gilbert Moyle testified to observation of the speed and carelessness with which the respondent's drivers drove trucks. Yet, despite this observation and their knowledge of losses, there is no clear or compelling evidence that, prior to November 14, other than for sporadic meetings of the drivers at which careful driving was stressed and the discharge of Patterson, the respondent otherwise disciplined those who allegedly were responsible for the accidents.

Henry Moyle came to Pocatello on the afternoon of November 13. There, according to his own testimony, he informed his brother, Gilbert Moyle, and Copening of the decision reached the previous day in Salt Lake City to discharge the drivers and discussed the possibilities of securing new drivers. Gilbert Moyle's testimony concerning this conference is somewhat different. He testified at first that Henry Moyle recited that the matter had been discussed with Sheets "and that it would be absolutely necessary to discharge the drivers." Later on cross-examination he testified:

Q. Now, it is true, is it not, that the decision to discharge the drivers had already been made by Mr. Moyle before he arrived here—
Mr. Henry Moyle? A. No, I think not.

Q. The decision wasn't made——

A. If he had, he didn't tell me about it.

He testified finally with respect to this issue:

Q. Touching the decision to discharge the drivers, concerning which you have been questioned, when Henry Moyle came up from Salt Lake City, state whether or not you were informed that that decision to discharge the drivers had already been made by Mr. Moyle and Mr. Sheets? A. I think that it had.

Q. So you were simply advised——

A. I was advised to discharge them, and I went ahead and did so.

Copenig's testimony concerning this meeting on November 13 is more explicit concerning the fi-

nality of discharge allegedly determined upon the day before. He testified that Henry Moyle informed him that in order for the respondent to secure insurance it was necessary to discharge the old drivers and that this determination was made on the afternoon of November 13.

Thus it is by no means clear, based upon the testimony of the respondent's own witnesses, when the decision to discharge was made and by whom. According to Copenig, it was made on November 13. Indeed, it seems hardly likely that Sheets and Henry Moyle, knowing as little as they did of the actual plant operations and personnel problems, would have come to such a major and final decision without consulting Gilbert Moyle. The undersigned believes, and finds, that the actual decision to discharge, together with means of executing the decision, was made the afternoon of November 13 at Pocatello, and not on November 12 in Sale Lake City.

In reaching this decision on November 13 and thereafter in carrying it out, neither Gilbert Moyle, Copenig, nor Rice made effort to retain in the respondent's employ those drivers whose records were beyond reproach. The discharges were made throughout the day of November 14 in the following manner: About 9 o'clock in the morning Rice telephoned all the drivers at their homes and asked them to report to the plant. Even at this hour, Evans had a premonition that the drivers were to be discharged and he so informed Merrill. The

drivers who were in Pocatello at the time and had been called by Rice, reached the plant between 9:30 and 11:30 a. m. The men waited around the yard until 11:45 a. m., when they were issued their checks and told of their discharge because of the policy cancellation and that the respondent was hiring new drivers. The drivers who were not in town that morning were informed of their discharge later that afternoon and evening on their return to the plant from their out-of-town trips. All drivers later received separation notices which stated that their services were "terminated due to reorganization made necessary by cancellation of insurance." The respondent gave no explanation for discharging the men on November 14 instead of November 15, the end of the regular pay period.

The day of the discharges was the day the Union presented its proposed contract. The Union's committee, with the *assistant* of Brandt and Rosqvist, drafted a proposed contract and the committee agreed that Brandt and Rosqvist would present it to the respondent. A. C. Thompson, who was employed by the Pocatello Central Trades and Labor Council, testified that he accompanied Brandt to the respondent's office; that they arrived there about 10:15 or 10:20 and departed, after a brief conference with Copening and Gilbert Moyle, 20 or 25 minutes later.²⁶ The only issue in dispute as it affects the present discussion is the time Brandt and Thompson

²⁶The substance of this conference as it affects the allegation that the respondent refused to bargain is considered hereafter.

reached the respondent's office. Copening testified they arrived at 11:30 a. m. and that while they were in his office he time-stamped the submitted contract. The time stamp indicates the contract was stamped at this hour. Gilbert Moyle fixed the time of their arrival as "around noon" and testified that all the drivers' checks had already been made out and a great part distributed before their arrival. Aside from this conflict, this much is clear: (1) the in-town drivers were called by Rice around 9 o'clock to report to the plant; (2) nothing was said at the conference by Copening or Moyle to Brandt and Thompson about the discharge of the drivers; and (3) the submission of the contract confirmed what Ayers had told Rice that the Union was demanding \$185 a month for the regular drivers.

After receiving his check on November 14, Evans saw Gilbert Moyle and requested a letter of recommendation. He was told that he had been ordered discharged by the Insurance Company and was referred to Copening. Although Moyle denied this, his denial cannot be credited for the following reason: Sometime thereafter, Evans went to Salt Lake City to see Little and there explained that the drivers were unable to obtain work because the Insurance Company had effected their discharge. On December 18, Little wrote Evans that, in cancelling the policy, the Insurance Company had "never requested the discharge of any drivers."

Reference has been made previously to the questions concerning union membership asked of Trevor

Moss and Merlin Bowman on November 15 and 16 when they were hired as new drivers, and to Sheppard's conversation with Williams at Boise concerning the Union membership of drivers in that plant. Moss had some difficulty with one of the discharged drivers in December. Hearing of this, Rice cautioned Moss to avoid associating with these men in order to prevent an further unpleasantness. Moss testified that Rice remarked, "Some of the fellows are under the impression that you are just working here temporarily, . . . You have a job as long as you go ahead and do your work . . . Those sons of bitches are never going to drive out here again." Rice admitted that he cautioned Moss to avoid the discharged drivers but denied the other remarks imputed to him by Moss. The undersigned accepts Moss' testimony and finds Rice did make these statements. Rice hired all the new drivers and, by November 20, had a full crew of 18 men. Whereas the discharged men had received \$160 a month, the new drivers were paid \$175 a month, \$10 less than the Union was demanding.

One day in December 1941, Evans had gone to the plant and was engaged in a friendly conversation with Foreman Henninger on the loading dock. Henninger remarked that it was unfortunate that the drivers had been discharged because the insurance had been cancelled. Evans replied that the discharge was not caused by the cancellation of the policy but because the drivers had joined the Union. He testified further that Henninger "kind of hung his head and studied a little bit, and he said, 'Well,

maybe you are right.' He said 'I knew you fellows belonged to the union a long time before you were fired.' " Henninger admitted that he had a conversation with Evans in December and that he made the remark "that it was too bad that the insurance was cancelled and that the boys were all thrown out of work." He testified further as follows:

Q. At the time you made that comment, I will ask you whether or not Mr. Evans said in substance or effect that you knew better, that they were fired because they belonged to the union, to which you said,—hung your head and said, "Maybe you are right?"

A. I might have made that remark, but I never hung my head and said "You might be right." I thought Johnny knew me better than that.

Q. Did you make any comment that Evans might be right? A. No, sir.

The undersigned finds that Henninger made these remarks to Evans. R. E. Miller, one of the drivers discharged on November 14, was rehired as a driver on March 10, 1942. He testified that about March 13 he had a conversation with Rice. He testified as follows concerning this conversation:

A. Well, he merely told me that in case I had anything to talk over, to come in and sit down and they would be glad to listen to me and also that during that meeting in July—I didn't attend—but he told me that it was agreed that if that wasn't enough money the drivers were to

come and notify the office, and he was satisfied that if they had, the office would have done something about the wage scale.²⁷

Q. Did Mr. Rice mention anything about the Union directly or indirectly?

A. Well, he merely stated that if the drivers had come to the office instead of going uptown—I believe that was his words.

Q. If they had done that they would still have their jobs?

A. He didn't say their jobs, he just said they would be working now, as nearly as I remember it.

Rice denied Miller's testimony. Miller was a credible witness and appeared to make every effort to confine his remarks to the truth. The undersigned accepts his testimony and finds that Rice made the remarks attributed to him by Miller.

Offers of reemployment to the discharged drivers

On December 14, 1941, Henninger offered Whitesides a job on the loading dock loading trucks with gasoline at 60 cents an hour for a 40-hour week, with time and a half for overtime. The next day, Whitesides informed Henninger that the Union did not care to have him accept this position. Between February 11, 1942, and June 19, 1942, Whitesides was reemployed in the respondent's warehouse.

²⁷The meeting referred to is the one held in June 1941, when the drivers were informed by Gilbert Moyle that they would be put on a monthly wage of \$160.

Similar jobs were offered to Evans, Cornia, and Miller on December 15. The men refused the jobs on the advice of the Union. But on March 11, 1942, Miller was rehired as a truck driver. On December 18, Henninger offered Brower a position on the loading dock, which he accepted on December 20, working until February 20, 1942. When Brower quit his job it was offered to Burkholder but he refused because he obtained a position elsewhere as a truck driver.

Assuming that Henninger's estimate of 8 to 20 hours overtime per week on the loading dock is accurate, the men would have averaged on the basis of a 40-hour week with time and a half for overtime approximately the same earnings per month as they had made as truck drivers. It is clear, however, that this was not an offer of an equivalent job, and by Henninger's own testimony he admitted that nothing was said to any of the truck drivers about the restoration of any of the previous privileges they had enjoyed. He admitted that they were to start on the loading dock as new employees. It is clear from the testimony of Evans and Miller that in the opinion of the Union the jobs offered to the drivers on the loading dock were not the equivalent of those they formerly held as truck drivers and for that reason the Union did not want them to accept Henninger's offer.

Concluding findings

Although all of the respondent's officers denied knowledge of the drivers' union membership, their

denials are hardly credible in view of the extensive course of union activity, the findings heretofore made and facts now to be recited. Between the renewal of the policy in August, and notice of cancellation on November 10, the drivers at Pocatello were engaged in their efforts to organize the Union. In September and October, Evans disclosed his union membership to service station operators along the road, handling the respondent's products.²⁸ It seems reasonably clear that by November 1, all of the drivers operating out of Pocatello, except K. C. Brower,²⁹ had either signed applications, paid partial initiation fees, or joined the Union. On or about November 1, the respondent's drivers at a meeting in the Pocatello Labor Temple appointed a committee consisting of Evans, Chairman, Leonard Fowler, and P. P. Stanger, to draft an agreement to be presented to the respondent. This committee assisted by Brandt and Rosqvist drafted a proposed contract covering working conditions and rates of pay. On November 13, as heretofore found, Rice stated to Ayers that "he [Rice] . . . heard the boys joined the union," and Ayers informed Rice of the

²⁸There is hearsay evidence upon which the undersigned makes no finding that Gilbert Moyle and Copenig learned from service station operators that drivers Merrill and Whitesides had boasted of their union membership and how tough they were going to make it for the respondent.

²⁹According to Ayers and Evans, Brower had not joined the Union. Brower was however discharged along with the drivers.

terms of the Union's proposed contract that had been prepared. As hereinafter appears, the contract was not submitted to the respondent until the morning of November 14. In December 1941, Henninger told Evans that he too, knew of the drivers' union membership long before they were fired. Gilbert Sheets, the respondent's president, received daily reports from the plant and visited Pocatello once a month. Henry D. Moyle, also received daily reports from the refinery and made frequent visits to Pocatello and testified that he "knew from day to day and week to week and month to month what was transpiring." Thus, to credit denials of union knowledge on the respondent's part, would be to ignore facts and circumstances that point overwhelmingly to the contrary. The undersigned therefore finds that the respondent knew or believed that all of its drivers at Pocatello had joined the Union.

In evaluating the good faith of the respondent, consideration has been given to the fact that all drivers, including those who the respondent knew were never in accidents, were discharged. It is pertinent also to consider its failure to discharge its other drivers whose accidents contributed to the loss ratio. As heretofore mentioned, the insurance policy covered the automobile equipment of Covey and Idaho. Four of their drivers, Crawshaw, White, Zollman, and Conrad were not discharged, and had been involved in four or five accidents, included in the losses upon which the Insurance Company based

cancellation.³⁰ While it may be true as the respondent asserts that it did not discharge any Covey drivers, because these men did not drive transport trucks, this does not appear to be the fact in the case of all Idaho drivers, especially those who worked under Sheppard's orders at Boise, four of whom at least, were engaged in the bulk haul of gasoline. Two of these drivers, Pearson and Zollman had accidents resulting in substantial losses that contributed to the insurance cancellation. Sheppard could have discharged them at the time of their accidents or on November 14, had the respondent so ordered.

The only reasonable inference that can be drawn from this equivocal course of conduct is that the respondent's given reason for the discharge of the Pocatello drivers, was not the true reason. The undersigned so finds.

From the foregoing, the undersigned finds that the respondent knew or believed that all the individuals listed in Appendix A had become members of the Union and the Machinists; that on November 14 the respondent discharged the said individuals because of this knowledge or belief of their membership in or activity on behalf of the Union, and in the case of Archibald for his activities on behalf of

³⁰In answer to any possible contention that these accidents involved a small total loss, there is the testimony of Little that cancellation was based upon accident frequency as well as excessive loss ratio.

the Machinists or his activities on behalf of the Union.

The undersigned finds that by thus discharging the employees listed in Appendix A, the respondent discriminated in regard to their hire and tenure of employment, and thereby discouraged membership in the Union and the Machinists, and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Wayne Douglas

Douglas started to work for the respondent in January 1940. He was thereafter laid off and re-hired about August 1941 by Kermit Rice, and worked at Baker, Oregon. The drivers at Baker were engaged in the bulk haul of gasoline from Umatilla, Oregon and Attalia, Washington, to Baker and Boise, Idaho.

In September, Douglas was transferred to Pocatello where he engaged in the same sort of work as the other drivers. On September 29, Douglas signed an application card in the Union stating thereon that he was employed at the respondent's plant in Pocatello. The finding heretofore made that the respondent knew or believed its Pocatello drivers had joined the Union is equally applicable to Douglas. Sometime thereafter Douglas was sent back to Baker. On October 16, Douglas was involved in a serious accident at Weiser, Idaho, for which he was apparently responsible. He resumed work on October 29 and worked continuously thereafter down to November 20, 1941. Although Gil-

bert Moyle testified that he instructed foreman Stiff to discharge Douglas because of the Weiser accident, it is clear, as indicated above from the respondent's own records, that Douglas was not discharged and resumed work after the accident.

Douglas testified that on November 20 Mrs. Stiff instructed him "not to pull any more trips, and not to ask any questions." This testimony is not contradicted. On either November 21 or 22 Douglas went to Pocatello to inquire about his status and saw Gilbert Moyle and Copening in the refinery office. Douglas testified that he was told that he was discharged for the same reason as the other drivers, "on account of the insurance was cancelled." He testified further that Gilbert Moyle showed him the telegram that had been received from the insurance company effecting cancellation of the policy.

The respondent urges that the discharge of Douglas had no connection with that of the other drivers on November 14, and that it bore no relationship to the cancellation of the insurance policy, but rather that Douglas was discharged for his Weiser accident on October 16. This seems hardly credible in view of the undisputed testimony and the respondent's own pay-roll records indicating that Douglas resumed employment on October 29 and worked continuously until November 20. Gilbert Moyle testified that he instructed Stiff to discharge Douglas on October 16; that he was subsequently discharged on October 17 or 18; that he learned about November 16 or 17 that Douglas was still on the payroll;

and "that finally Mr. Stiff concluded that for the best of the service", to "let him go". On cross-examination Moyle testified that he did not know Douglas had resumed work on October 29; that he first discovered this on examination of the Baker payroll on November 21, and that he had no further conversation with Stiff about Douglas. Stiff did not testify and the respondent offered no explanation for its failure to call Stiff to corroborate Moyle's testimony that Douglas had been discharged on October 17, or 18, or to explain why Douglas resumed work on October 29. Moyle's testimony is indecisive, not clear or convincing and in the absence of corroboration by Stiff does not convincingly explain Douglas' discharge five weeks after the accident. Copening testified that when Douglas reported to Pocatello he was informed that he was discharged because of the Weiser accident. When asked if he told Douglas that he was discharged for the same reason as the other drivers, he replied, "I don't recall that statement. I would say that I did not make the statement." When asked again if he told Douglas that he was discharged because of the Weiser accident, he replied, "As I recall I think that I did, yes." Gilbert Moyle admitted that he saw Douglas at the plant on either November 21 or 22, but denied that he talked to Douglas or showed him the telegram.

It may be conceded that the Weiser accident on October 16 would be a sufficient justification for the discharge of Douglas either at that time or on November 21. But if the discharge occurring

more than five weeks after the accident was in any proximate degree motivated by Douglas' union membership it was a discriminatory discharge under the Act. This is the undersigned's conclusion and for the following reasons: (1) Douglas was the only member of the Union at Baker, Oregon; (2) he joined the Union in Pocatello and associated with the other drivers; (3) the respondent's assertion that Douglas was ordered discharged on October 16 is hardly credible in view of his continued employment thereafter; and (4) the respondent's asserted reason that Douglas was discharged because he was the only Baker driver involved in an accident has no validity when consideration is given to the fact that Pocatello drivers who did not have accidents but who belonged to the Union were discharged.

The undersigned therefore finds that the respondent discharged Douglas because of his union membership or activity and in so doing discriminated in regard to his hire and tenure of employment thereby discouraging membership in the Union and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

D. The refusal to bargain collectively

1. The appropriate unit

The consolidated complaint alleged that "the employees of the respondent employed as truck drivers, excluding the truck foreman, constitute * * * a unit appropriate for the purposes of collective

bargaining * * *.''' The respondent in its answer denied the appropriateness of the unit as alleged but did not offer any testimony in support of its denial. All of the drivers employed at Pocatello perform essentially the same services and are paid the same salary. Prior to November 1941, they received \$160 a month. The drivers compose a compact and cohesive unit, take their orders from Rice and Henninger, and, except on the limited occasions when some of the drivers are engaged in the plant clean-up, confine their duties to the hauling of the respondent's petroleum products. The drivers are under bond and are charged at times with the responsibility for the collection of monies owed the respondent by its customers. On November 1, 1941, there were 19 drivers at Pocatello, excluding the foreman, all of whom were eligible to join the Union.

The undersigned finds that the employees engaged in the driving of the respondent's transportation trucks at Pocatello, excluding the foreman, constituted at all times material herein, and that they now constitute, a unit appropriate for the purposes of collective bargaining with respect to wages, rates of pay, hours of employment, and other conditions of employment, and that the said unit insures to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act.

2. Representation by the Union of a majority in the appropriate unit

Employees in the unit above found appropriate became interested in the Union in the summer of 1941. By September 29, ten of the employees on the respondent's pay roll had signed applications in the Union. By October 21 seven additional drivers had signed application blanks. In addition, two drivers signed applications which were undated. Robert W. Patterson, who signed an application on September 29, was discharged for cause on or about November 5 and the Union makes no contention with respect to his discharge. Disregarding the two undated application blanks and the application of Patterson and that of Douglas who had been transferred, the Union on October 21 had at least 15 signed applications for membership among the 19 drivers in the appropriate unit. By October 27, 17 of the 19 drivers, excluding Patterson and Wayne Douglas, had paid all or part of their initiation fees in the Union.

On January 16, 1942, the charter of Local No. 440 of the Union in which the drivers had signed applications and paid their initiation fees, was revoked on instruction of Daniel J. Tobin, president of the International Union, and a new charter installed for Local No. 983 as its successor. Lee Owens succeeded Brandt as business agent of the Union and all records of Local No. 440 were turned over to Owen. Although Owen, in testifying, could not identify the signatures on the application, he stated as a matter of personal knowledge that 11

of the drivers were members of the Union. In addition, six drivers, including four named by Owen, identified their signatures on the applications, which were in evidence. The respondent and the Association offered no evidence that the signatures on the applications were not genuine.³¹ The Union undertakes to bargain for those who have signed its applications. It is well established that the signing of an application for membership in a labor organization in itself constitutes a designation of that organization as a bargaining agent.³²

The undersigned finds that on November 14, 1941, and at all times thereafter, the Union was the duly designated representative of a majority of the employees in the appropriate unit, and that, by virtue of Section 9 (a) of the Act, it was the exclusive representative of all of the employees in the unit for the purposes of collective bargaining.

3. The refusal to bargain

On November 14, 1941, Brandt, business agent of the Union, presented the Union's contract to the

³¹In *N.L.R.B. v. Somerset Shoe Co.*, 111 F. (2d) 681 (C.C.A. 1), the court placed on the respondent the burden of going forward with evidence to challenge the authenticity of designation signatures "which could reasonably have been checked against the signatures of the employees on respondent's pay roll."

³²*N.L.R.B. v. Sunshine Mining Co.*, 110 F. (2d) 780 (C.C.A. 9), cert. den. 312 U. S. 678; *N.L.R.B. v. Chicago Apparatus Co.*, 116 F. (2d) 753 (C.C.A. 7).

respondent at a conference which was attended by Gilbert Moyle and Copening on behalf of the respondent. The terms of the contract were not discussed by the parties and Brandt suggested that the parties meet the following week to continue negotiations. This was agreeable to the respondent. Copening stated that he would in the meantime refer the Union's contract to Henry D. Moyle for study. As indicated heretofore, nothing was said during the conference about the discharge of the drivers which had occurred that morning and Brandt was without knowledge of this fact. On the afternoon of November 14 all of the discharged drivers who were in Pocatello held a meeting at which they appointed John Evans to accompany Rosqvist and Brandt to the next conference with the respondent.

On Friday morning, November 21 Brandt and Rosqvist accompanied by Evans returned to confer with the respondent. Present at the meeting on the respondent's behalf were Henry Moyle, Gilbert Moyle, Copening, and Peterson. Brandt started the conference by stating that either he or the committee represented the Union; that they were present to discuss the submitted contract and to seek reinstatement of the discharged drivers. Henry Moyle, the respondent's spokesman, replied that he did not know Brandt or Rosqvist and demanded proof of the committee's authorization to represent the Union. With respect to the genuineness of Moyle's first statement, it is clear beyond any doubt that Gilbert Moyle, Copening, and Pe-

terson knew who these men were and who they represented and why they were there. Copening acknowledged this at the hearing. In response to Moyle's demand for proof of authorization, Brandt replied that he represented 52 percent of the drivers but refused to divulge their names or submit any proof to substantiate his assertion. It must have been reasonably clear to the respondent's representatives that the committee purported to represent only the Union. Henry Moyle had seen the proposed union contract and must have known by reading it that the Union sought to bargain only for the respondent's drivers. Moyle wanted evidence of the committee's "right to bargain for the employees of the refinery" and stated that the respondent had a contract with the Association covering the employees and that this agreement would prevent any negotiations with the Union unless its authority was established.³³ Moyle testified that he had the impression that the committee sought to bargain "for all of the employees." That any such impression could have been reasonably entertained is difficult to believe in view of the committee's personnel and the explicit language of the

³³The existence of a contract with an employer-dominated organization affords no justification for an employer's refusal to bargain collectively with a bona fide labor organization which is the duly designated representative of the majority of its employees in an appropriate unit. See *N.L.R.B., v. Bradford Dyeing Association*, 310 U. S. 318; *N.L.R.B., v. Wm. Tehel Bottling Company*, 129 F. (2d) 250, (C.C.A. 8).

submitted contract which sought to include "road drivers, city pick-up drivers, loaders, and checkers and other employees . . . properly coming under the jurisdiction" of the Union. Toward the close of the conference the suggestion of an election to determine representation arose but it is not clear from the evidence whether the suggested election was to be a contest to determine the right of the Union and the Association to represent all employees or restricted to the drivers only. No agreement was reached regarding this. Evans admitted while testifying, that Moyle stated he would bargain upon presentation of proper authority but the committee failed to present proof of majority designation. The respondent gave no reply to the committee's request for reinstatement of the drivers. The conference concluded by Brandt's stating that if the respondent would not recognize the Union, charges would be filed.

Regardless of the Union's refusal to present proof of its majority it is clear that an employer who undermines by means of unfair labor practices, including the discharge of all union members in the appropriate unit, the majority designation of the Union seeking to bargain collectively, cannot thereafter excuse his failure to bargain on the ground that the Union failed to reveal its majority. As fully described above, the respondent had completed its campaign to destroy the Union. Its conduct had plainly placed in jeopardy the majority status of the Union and indicated its bad faith in demanding proof of a majority. Under the cir-

cumstances, the refusal of the Union to furnish this proof or enter an election to test its strength at that time was not unreasonable.³⁴ The undersigned concludes and finds that no question with respect to the majority status of the Union or the contract with the Association excused the respondent's failure to negotiate with the Union on and after November 21, 1941. Such conduct coupled with the respondent's destruction of the Union's majority by the discharges, constituted a refusal to bargain with the duly designated representative of its employees in an appropriate unit, and was an unfair labor practice within the meaning of the Act.

Accordingly, the undersigned finds that on and after November 21, 1941, the respondent refused to bargain collectively with the Union as the exclusive representative of its employees within an appropriate unit, in respect to rates of pay, wages, hours of employment, and other conditions of employment, and that the respondent thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce

The undersigned finds that the activities of the respondent set forth in Section III above, occur-

³⁴Cf. *Matter of Chicago Apparatus Company and Federation of Architects, Engineers, Chemists and Technicians, Local 107*, 12 N.L.R.B., 1002, enf'd N.L.R.B., v. *Chicago Apparatus Co.*, 116 F. (2d) 753 (C.C.A. 7).

ring in connection with the operations of the respondent described in Section I above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that the respondent has engaged in and is engaging in unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

The undersigned has found that the respondent has dominated and interfered with the formation and administration of, and has contributed support to the Association. The effects and consequences of the respondent's domination, interference with, and support of the Association, as well as the continued recognition of the Association as a bargaining representative of its employees, constitutes a continuing obstacle to the free exercise by its employees of their right to self-organization and to bargain collectively through representatives of their own choosing. Because of the respondent's illegal conduct the Association is incapable of serving the respondent's employees as a genuine collective bargaining agency. Accordingly, the undersigned will recommend that the respondent disestablish and withdraw all recognition from the Association as representative of any of its employees for the purpose of dealing with it concerning grievances, labor disputes, wages,

rates of pay, hours of employment, or other conditions of employment.³⁵ The contract of June 1, 1942, between the respondent and the Association, which by its terms is still in effect, was and is part of the respondent's plan to frustrate self-organization and to defeat collective bargaining by its employees. Moreover, it provides for recognition of the Association as the representative of the respondent's employees, although at the time that the contract was entered into no proof was presented that the organization had been designated by an uncoerced majority of the employees covered by the contract as their representative for the purposes of collective bargaining. The undersigned will therefore recommend that the respondent cease and desist from giving effect to this or any other contract with the Association respecting grievances, labor disputes, rates of pay, wages, hours of work, or other conditions of employment. Nothing in the recommendation that follows, however, shall be deemed to require the respondent to vary or abandon the wage rates or conditions of employment which the respondent may have established in conformity with the contract, as extended, renewed, modified, supplemented, or superseded.³⁶

³⁵See *National Labor Relations Board v. Link-Belt Co.*, 61 S. Ct. 358; *H. J. Heinz v. National Labor Relations Board*, 61 S. Ct. 320.

³⁶*National Licorice Co. v. National Labor Relations Board*, 309 U. S. 350, *enf'd as mod.* *Matter of National Licorice Co. and Bakery and Confectionery Workers International Union of America*, Local Union 405, Greater New York and Vi-

The undersigned has found that the respondent has discriminated against the employees listed in Appendix A and Wayne Douglas, in regard to their hire and tenure of employment. The undersigned is of the opinion that, because of K. C. Brower's association and employment with the other drivers, the respondent concluded that he too was a union member and therefore discharged him in furtherance of its effort to discourage membership in the Union. By discharging Brower, the respondent indicated that it considered him to be in the same class and to merit identical treatment with the union members whom it also discharged. The undersigned will recommend therefore that the respondent offer to the employees listed in Appendix A and Wayne Douglas full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges, and make them whole for any loss of pay they may have suffered by reason of the respondent's discrimination against them by payment to them of a sum of money equal to the amount which they normally would have earned as wages from the date of the respondent's discrimination against them to the date of the offer of reinstatement, less their net earnings,³⁷ during said period.

cinity, 7 N.L.R.B. 537; National Labor Relations Board v. Stackpole Carbon Co., 105 F. (2d) 167 (C.C.A. 3), enf'g as mod. 6 N.L.R.B. 171, cert. den. 308 U. S. 605.

³⁷By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtain-

Having found that the respondent refused to bargain collectively with the Union, the undersigned will, therefore, recommend that the respondent, upon request, bargain collectively with the Union as the duly designated representative of the employees in the unit found appropriate, with respect to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment.

Upon the basis of the foregoing findings of fact and upon the entire record of the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 440, was, and its successor No. 983, affiliated with the American Federation of Labor; International Association of Machinists, Local No. 198, affiliated with the American Federation of Labor; and Idaho Refining Company Employees' Benefit and Labor Association are, la-

ing work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See Republic Steel Corporation v. N.L.R.B., 311 U. S. 7.

bor organizations within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

3. By dominating and interfering with the formation and administration of the Association, and contributing support to it, the respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

4. By discriminating in regard to the hire and tenure of employment of the employees listed in Appendix A, and Wayne Douglas thereby discouraging membership in Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, and International Association of Machinists, Local No. 198, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

5. The respondent's truck drivers at Pocatello, excluding the foreman, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

6. Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 440, was on November 14, 1941, and at all times thereafter until January 16, 1942, and Local No. 983 thereafter has been, the exclusive representative of all of the employees in such

unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

7. By refusing on November 21, 1941, and at all times thereafter, to bargain collectively with Local No. 440 and therewith its successor Local No. 983 as the exclusive representative of all its employees in such unit, the respondent has engaged and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

8. The aforesaid labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law the undersigned recommends that the respondent, Idaho Refining Company, Pocatello, Idaho, and its agents, officers, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of the Association, or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to the Association, or to any other labor organization of its employees;

(b) Giving effect to or performing the contract of June 1, 1942, with the Association, or any extension or renewal thereof, or any other agreements, understandings, or arrangements entered into with the Association, respecting rates of pay, wages,

hours of work, or other conditions of employment;

(c) Discouraging membership in Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, and International Association of Machinists, Local No. 198, both affiliated with the American Federation of Labor, or any other labor organization of its employees, by discouraging, laying off, or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of employment;

(d) Refusing to bargain collectively with Local Union No. 983 of Teamsters Chauffeurs, Warehousemen and Helpers, affiliated with the American Federation of Labor, as the exclusive representative of the drivers at Pocatello, excluding the foreman, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Completely disestablish the Association as the representative of any of its employees for the purpose of dealing with the respondent concerning

grievances, labor disputes, wages, rates of pay, hours of work, and other conditions of employment;

(b) Withdraw all recognition from the Association as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of work, and other conditions of employment, and completely disestablish the Association as such representative;

(c) Offer to the employees listed in Appendix A and Wayne Douglas immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;

(d) Make whole the employees listed in Appendix A and Wayne Douglas for any loss of pay they may have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money equal to that which he normally would have received as wages from the date of the respondent's discrimination against him to the date of the respondent's offer of reinstatement, less his net earnings,³⁸ during said period;

(e) Upon request, bargain collectively with Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, affiliated with the American Federation of Labor, as the exclusive representative of the respondent's truck drivers at Pocatello, excluding the foreman, in respect to rates of pay, wages, hours

³⁸See footnote 37, above.

of employment, and other conditions of employment;

(f) Post immediately in conspicuous places in its plant at Pocatello, and on the premises occupied or used by the respondent at Boise, Idaho, and Baker, Oregon, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1 (a), (b), (c), (d) and (e) of these recommendations, (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a), (b), (c), (d), and (e) of these recommendations; and (3) that the respondent's employees are free to become or remain members of Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, and International Association of Machinists, Local No. 198, both affiliated with the American Federation of Labor, and that the respondent will not discriminate against any employee because of membership or activity in those organizations;

(g) Notify the Regional Director for the Nineteenth Region in writing within ten (10) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply therewith.

It is further recommended that unless on or before ten (10) days from the date of the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the Na-

tional Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended—effective October 14, 1942, any party may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Shoreham Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceedings (including rulings upon all motion or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days after the date of the order transferring the case to the Board.

MORTIMER RIEMER,

Trial Examiner.

Dated: October 20, 1942.

[Printer's Note: "Appendix A" here attached is identical with "Appendix A" attached to the Decision and Order, at page 64 of this printed record.]

[Title of Board and Causes.]

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, Jack McCaleb being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 27th day of February, 1943, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Order (dated February 25, 1943) and Intermediate Report to the following named persons, addressed to them at the following addresses:

69355

Teamsters, Chauffeurs, Warehousemen and
Helpers, Local No. 983, A.F. of L.
Att: Lee W. Owen, Secy. Treas.
140 South First Ave.
Pocatello, Idaho

69356

International Association of Machinists,
Local No. 198, A.F. of L.
Att: Zenos F. George, Recording Secy.
316 North 9th Avenue
Pocatello, Idaho

69357

Mr. Herbert Thatcher
738 Bowen Bldg., Wash., D. C.

69358

Idaho Refining Company
Pocatello, Idaho

69359

Messrs. Henry D. Moyle and David L. McKay
720 Newhouse Bldg.
Salt Lake City, Utah

69360

Mr. A. L. Merrill
Carlson Bldg.
Pocatello, Idaho

69361

Idaho Refining Co. Employees' Benefit and
Labor Association
Att: Delmar R. Peters
720 E. Oak, Pocatello, Idaho

69362

International Association of Machinists
Att: Paul R. Hutchings
Machinists Bldg.
Washington, D. C.

JACK McCALEB.

Subscribed and sworn to before me this 27th day
of February, 1943.

[Seal]**JOHN E. LAWYER,****Notary Public, D. C.**

My commission expires Aug. 31, 1944.

(Return Card Receipts for above Registered Mail
Attached.)

[Title of Board and Causes.]

STATEMENT OF EXCEPTIONS OF IDAHO
REFINING COMPANY TO THE INTER-
MEDIATE REPORT AND TO RULINGS
OF THE TRIAL EXAMINER

I.

Respondent, Idaho Refining Company, takes exceptions to all adverse findings, conclusions and recommendations made by the Trial Examiner in the Intermediate Report filed in the above matter of October 22, 1942, more particularly as follows:

1. Excepts to the finding and conclusion that Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983 is a successor to Local No. 440, and that Local 983 had a right to bargain with the Respondent, because there is no substantial evidence to support either such finding or conclusion.

2. Excepts to the conclusion recited on page 4 of the Report to the effect that "the relationship between the three corporations above referred to is such, and the officers of the respondents have so acted, as to constitute the respondent an employer within the meaning of that term as used in the Act, of employees of Covey and Idaho," upon the ground that the evidence fails to support such conclusion.

3. Excepts to that statement under Subdivision III entitled "Unfair Labor Practices" appearing on page 4 of the Report as follows: "In September, 1941, the drivers started to join the Union and by late October all but one had joined the Union. Their

Union membership was the subject of general discussion among respondent's other employees", upon the ground that the evidence fails to support said finding.

A. The Association

4. Excepts to the failure by the Trial Examiner to find, as proved by the evidence adduced, that the Association was a voluntary organization by its employees; that the respondent did not have any connection with the organization of said Association and asserted no influence of any kind or character upon its employees with respect to the organization or the control and management of the Association; that while some supervisors were members of the Association, yet they became members before their advancement and remained members thereafter for the purpose of maintaining sick benefits and other similar advantages of the Association.

5. Excepts to the failure of the Trial Examiner to find that the change house built on company property, which was constructed by the labor of members of the Association, constituted a contribution by the Association to the respondent in consideration of any privileges accorded the employees.

6. Excepts to the failure of the Trial Examiner to find that no supervisory employee who may have maintained membership in the Association ever acted or participated in any discussion or negotiation with the Respondent for collective bargaining on behalf of the Association.

7. Excepts to the conclusion on page 9 of the Report to the effect that the relationship between the Respondent and the members of the Association developed on the part of the employees reliance and dependence upon the employer rather than the labor organization as the employees' representative and that such was "revealed in this case by the overwhelming vote of confidence given the Association in the vote conducted on company property following the address of Rosqvist", and in further concluding "it can hardly be asserted that this vote afforded employees an opportunity to fairly consider the relative advantages and disadvantages of trade unions versus Association membership", more particularly because there is no substantial evidence supporting any such findings and conclusions and the same is based upon mere supposition and conjecture.

8. Excepts to the method of attempting to evaluate various asserted privileges of the Association without considering the contribution made by the members of the Association in labor for the construction of the Association hall, which, when properly considered and evaluated would lead to the reasonable conclusion that the members paid for all they received.

9. Excepts to the suggestion embodied in the recitation on page 9 of the Report to the effect that the Respondent was unduly lenient in the execution of the 1941 and 1942 agreements because such finding is not supported by any competent evidence.

10. Excepts to the finding on pages 9 and 10 of the Report to the effect that "the Respondent interfered with, supported and dominated the formation and administration of the Association; and that the Respondent, by such conduct, and by its entire course of conduct, interfered with, restrained and coerced its employees in the exercise of the rights of self-organization, to form, join or assist labor organizations to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining, as guaranteed by Section 7 of the Act", particularly for the reason that a fair consideration of all the evidence and the proper inferences that might be drawn therefrom completely fails to support any such finding.

B. Interference, Restraint and Coercion

11. Excepts to the Trial Examiner's finding that Gilbert Moyle made the statements attributed to him by McBride and Cornia set forth on page 10 of the Intermediate Report for the reason that it is contrary to the evidence and, if said, did not have the effect the Trial Examiner attributed to them.

12. Excepts to the finding on page 11 of the Report that Stiff told the drivers that Gilbert Moyle informed him that the drivers were not to discuss union affairs or associate with the Pocatello drivers in that capacity because it is based on incompetent and hearsay testimony.

13. Excepts to the finding on page 11 of the Report: (a) that Kermit Rice remarked that trade

union membership never benefited him; (b) that Rice told Ayers that he had heard Boyd Cornia had joined the union and inquired what it was the drivers wanted; and (c) that Rice asked Heckert whether he belonged to any union and said that it was O. K. that he did not and that Mr. Moyle was strictly against unions, because the same is in each instance not supported by the evidence, and is immaterial, and, if said, was an expression of the respondent and justified by the right of free speech.

14. Excepts to the finding on page 12 of the Report that Gilbert Moyle questioned Trevor Moss as to union membership and expressed approval of the Association as to respondent's own organization, because the same is not supported by the evidence and, if said, had no effect upon the employees.

15. Excepts to the finding on page 12 of the Report that Copening questioned Merlin Bowman concerning his union membership, because the same is contrary to and is not supported by the evidence and, if said, had no effect upon the employees.

16. Excepts to the finding on page 12 of the Report that W. A. Sheppard asked Williams whether Ray Pittman and Mervin Zollman were union members and said that if they had joined the union Sheppard would use two recent accidents as an excuse to fire them, because the same is not supported by the evidence and, if said, had no effect upon the employees.

17. Excepts to the finding and argument of the Trial Examiner on page 12, line 60, et seq. and at

the top of page 13 of the Report that a controversy existed between the employees and the employer over the former's rights to self-organization, because the same is not supported by any substantial evidence.

18. Excepts to the failure of the Trial Examiner to find in accordance with the evidence, that the Respondent used union labor whenever available; that it constructed its asphalt plant, boiler house, heating unit, additions to its office building and other improvements with union labor; that it employed various men who were known to be union men, such as McBride, Rice, R. E. Miller, Guy Campbell and the river drivers and others.

19. Excepts to the conclusion on page 13 of the Report that the Respondent, through its agents, by interrogating employees about the union and union activities, by expressing a preference for the Association as its own organization, by threatening directly or indirectly employees with termination of employment because of membership or activity in the union which it opposed, and by the totality of such conduct and action, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. Said conclusion is not supported by proper findings nor based upon a fair consideration of all of the evidence and is unsupported by competent evidence adduced.

C. Discriminatory Discharges.

Archibald.

20. Excepts to the finding on page 13 of the Report that the denials of Rice and Gilbert Moyle are unworthy of belief and that there is a fair surmise that Rice, at least, was aware of Archibald's union membership.

21. Excepts to the reference on line 50 et seq. on page 13 of the Report that knowledge of Archibald's union activities came to the notice of higher management officers, because there is no evidence to support such inference.

22. Excepts to the finding on page 15 of the Report that it is reasonably apparent that resurrection of various incidents of Archibald's misconduct was an attempt to justify his discharge in retrospect and did not motivate his dismissal.

23. Excepts to the finding on page 15 of the Report that the underlying motive and real cause for the Respondent's discharge of Archibald on November 14th is found in his union activities and the membership of the drivers with whom he was so closely identified, because the same is not supported by competent evidence, but is contrary thereto.

24. Excepts to the finding on page 15 of the Report that Archibald was discharged because of his union membership, more particularly his activity in behalf of the union, and because of his close association with its members, and that by thus discharging Archibald the Respondent discriminated in regard to his hire and tenure of employment and thereby

discouraged membership in the Machinists and the Union and interfered with, restrained and coerced its employees in the exercise of rights guaranteed under Section 7 of the Act, particularly because there is no substantial evidence supporting such finding and the evidence is without substantial conflict proving the reason for the discharge was his misconduct, which had nothing to do with union activities.

The Truck Drivers at Pocatello.

25. Excepts to the finding on page 18 of the Report that there is no evidence that any insurance company required as a condition to the issuance of a policy of insurance that the drivers employed prior to November 14, 1941, should be discharged, on the ground that such finding is irrelevant and immaterial and is contrary to the evidence.

26. Excepts to the comment on page 18 of the Report that there is no adequate explanation why the discharge of the drivers never involved in any accident would cause the Respondent's application for insurance to receive more serious consideration.

27. Excepts to the failure of the Trial Examiner to find that the officers of the company, Henry D. Moyle and Gilbert S. Sheets considered, determined and acted upon the subject of the discharge of said drivers on the 12th day of November, 1941 at Salt Lake City, Utah, and at said time thought they could not reasonably secure insurance to replace the insurance theretofore cancelled without a discharge of all of the drivers on its major unit from the Pocatello plant.

28. Excepts to the finding on page 19 of the Report that it is not clear when the decision to discharge the drivers was made and by whom, because the evidence is definite and without dispute that said decision was made at Salt Lake City on November 12, 1941, by the president and vice-president of the company.

29. Excepts to the finding on page 19 of the Report that the actual decision to discharge, together with means of executing the decision, was made on the afternoon of November 13th at Pocatello and not on November 12th at Salt Lake City, because the evidence fails to support said finding.

30. Excepts to the finding on page 19 of the Report that the witness Evans "had a premonition" that the drivers would be discharged.

31. Excepts to the finding on page 20 of the Report that Gilbert Moyle's denial that he told Evans the latter had been discharged by the insurance company cannot be credited, for the reasons there set forth.

32. Excepts to the finding on page 20 of the Report that Rice remarked to Trevor Moss: "Some of the fellows are under the impression that you are just working here temporarily . . . you have a job as long as you go ahead and do your work . . . those sons of bitches are never going to drive out here again," because the same is not supported by competent evidence and, if said, was after the discharge of drivers and is immaterial for any purpose.

33. Excepts to the finding on page 21 of the Report that Henninger made remarks to Evans therein set forth, because the evidence does not support said finding, and that if said remarks were made, they were after the discharge of the drivers and were immaterial.

34. Excepts to the recitation of a conversation between R. E. Miller and Kermit Rice on page 21 of the Report for the reason that the same is not supported by the evidence, and if said conversation was had it was immaterial and occurred after the discharge of the drivers.

35. Excepts to the conclusion on page 22 of the Report that the offer of work on the loading dock was not the offer of an equivalent job, for the reason that this is not sustained by the evidence but is contrary thereto.

36. Excepts to the finding on page 23 of the Report that there was an extensive course of union activities in and around the Respondent's property and that the denial of Respondent's officers of knowledge of drivers' membership *are* "hardly credible."

37. Excepts to the finding on page 23 of the Report that the Respondent knew or believed that all of its drivers in Pocatello had joined the union, because there is no competent or substantial evidence to support such finding.

38. Excepts to the finding on page 23 of the Report that drivers under Sheppard's orders at Boise were engaged in the bulk haul of gasoline because the same is immaterial and irrelevant, and

further excepts to the failure of the Examiner to find that many of the drivers of Idaho Gas and Oil Company were independent licensees and operators and had their own equipment.

39. Excepts to the finding on page 23 that drivers Pearson and Zollman were drivers engaged in the bulk haul of gasoline under Sheppard's orders, because the same is immaterial and irrelevant, and not supported by substantial evidence; and further objects to the finding that Sheppard could have discharged them at the time of their accident if the Respondent had so ordered, on the ground that there is no substantial evidence to support such finding.

40. Excepts to the finding on page 24 of the Report that the Respondent's given reason for the discharge of the Pocatello drivers was not the true reason, upon the ground that there is no substantial evidence supporting such a finding. The Respondent further excepts to the fact that the Trial Examiner overlooked much of the testimony which corroborates and fully substantiates the reason given by the Respondent for the discharge of the Pocatello drivers, and particularly the testimony of such witnesses as Decker Little, H. McKay Allen, R. S. Turner, H. E. Benson, Walter W. Watkins, and other witnesses called by Respondent hereinbefore mentioned, and Respondent's Exhibit No. 5, being a letter from David M. Sweeney.

41. Excepts to the finding on page 24 of the Report that the Respondent knew or believed that all individuals listed in Appendix "A" had become

members of the Union and the Machinists, because said finding is not supported by any substantial evidence.

42. Excepts to the finding on page 24 of the Report that on November 14th the Respondent discharged individuals listed in Exhibit "A" because of the knowledge or belief of their membership in or activities on behalf of the Union, and in the case of Archibald, for his activities on behalf of the Machinists or his activities on behalf of the Union, because said finding is not supported by any substantial evidence, and in failing to find that said drivers were discharged because of the cancellation of the insurance due to high loss ratio and numerous accidents on the part of the drivers and under the belief entertained by the officers of the Respondent that other insurance could not likely be obtained without a replacement of said drivers, and in the case of Archibald for his misconduct, drunkenness, absences without leave and other acts recited in the evidence justifying such discharge.

43. Excepts to the conclusion on page 24 of the Report that the Respondent, by discharging the employees listed in Appendix "A", discriminated in regard to their hire and tenure of employment, and thereby discouraged membership in the Union and the Machinists and interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, because the conclusion is not based upon any proper or

competent finding and is unsupported by any substantial evidence.

Wayne Douglas

44. Excepts to the finding on page 24 of the Report that Respondent knew or believed that Wayne Douglas had joined the Union because said finding is not supported by substantial evidence.

45. Excepts to the Examiner's criticism of the Respondent for its alleged failure to call Stiff to testify, though no indication was given at the hearing that the Examiner desired to hear Stiff's testimony.

46. Excepts to the finding and conclusion on page 25 of the Report that the Respondent discharged Wayne Douglas because of his union membership or activities and in so doing discriminated in regard to his hire and tenure of employment, thereby discouraging membership in the union, and interfered with, restrained and coerced its employees in the exercise of the rights guaranteed under Section 7 of the Act, because the finding is not supported by any substantial evidence and the conclusion is not supported by any proper finding.

D.

Refusal to Bargain

47. Excepts to the finding on page 26 of the Report that the employees engaged in the driving of Respondent's transportation trucks, excluding the foremen, constituted at all times a unit appropriate for the purposes of collective bargaining with respect to wages, rates of pay, hours of em-

ployment and other conditions of employment, and that the same unit insures to employees of the Respondent the full benefit and right to self-organization and to collective bargaining and otherwise effectuates the policy of the Act.

48. Excepts to the failure of the Trial Examiner to find and to conclude that the officers of the Respondent were entitled to have Evans, Brandt or Rosqvist submit reasonable proof as to whom they purported to represent and their right to bargain for such employees, and that the failure of the said parties to submit said proof upon request by the officers of the Respondent so to do eliminated any complaint that the Respondent refused to bargain collectively.

49. Excepts to the statement on page 28 of the Report that the Respondent "had completed its campaign to destroy the union" and that it indicated its bad faith in demanding proof of a majority and that under such circumstances the refusal of the Union to furnish such proof or enter an election to test its strength at that time was not unreasonable, because said statements and conclusions are not supported by any substantial evidence.

50. Excepts to the finding and conclusion on page 28 of the Report that on and after November 21, 1941, the Respondent refused to bargain collectively with the Union as the exclusive representative of its employees with an appropriate unit in respect to rates of pay, wages, hours of employment and other conditions of employment,

and that the Respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act, upon the ground that there is no substantial evidence to support said finding and said conclusion is contrary to the facts proved.

The Remedy.

51. Excepts to the statements on pages 28 and 29 of the Report to the effect that the Respondent has dominated and interfered with the Association and the finding that such constitutes an obstacle to the free expression by its employees of the right of self-organization and collective bargaining, and that the contract of June 1, 1942 between the Respondent and the Association was part of the Respondent's plan to frustrate self-organization and defeat collective bargaining by its employees, because there was no substantial evidence introduced proving or supporting such statement or finding.

52. Excepts to the finding that at the time the contract was entered into no proof was presented that the organization had been designated by an uncoerced majority of the employees covered by the contract as their representative for the purposes of collective bargaining, upon the ground that this finding is not supported by any substantial evidence and is contrary thereto.

53. Excepts to the finding that the Respondent concluded that K. C. Brower was a union member and therefore discharged him in furtherance of

its effort to discourage membership in the Union, upon the ground that this is not supported by evidence.

CONCLUSIONS OF LAW

54. Excepts to Conclusion of Law No. 2 to the effect that by interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act, upon the ground that this conclusion is not supported by any proper finding or substantial evidence.

55. Excepts to Conclusion of Law No. 3 to the effect that by dominating and interfering with the formation and administration of the Association and contributing support to it the Respondent has engaged and is engaged in unfair labor practices within the meaning of Section 8 (2) of the Act, upon the ground that such conclusion is not supported by any proper finding or substantial evidence.

56. Excepts to Conclusion of Law No. 4 to the effect that by discriminating in regard to the hire and tenure of the employment of the employees listed in Appendix "A" and Wayne Douglas, thereby discouraging membership in Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983 and International Association of Machinists, Local No. 198, the Respondent has engaged in and is engaging in unfair labor practices within the mean-

ing of Section 8 (3) of the Act, upon the ground that such conclusion is not based upon any proper findings or any substantial evidence.

57. Excepts to Conclusion of Law No. 5 to the effect that the Respondent's truck drivers at Pocatello, excluding the foremen, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act, upon the ground that such conclusion is not based upon any proper findings or substantial evidence.

58. Excepts to Conclusion of Law No. 6 to the effect that Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 440 was, on November 14, 1941, and at all times thereafter until January 16, 1942, and Local No. 983 thereafter, has been the exclusive representative of all of the employees in such unit for the purpose of collective bargaining within the meaning of Section 9 (a) of the Act, upon the ground that such conclusion is not based upon any proper findings or any substantial evidence.

59. Excepts to Conclusion of Law No. 7 to the effect that by refusing on November 21, 1941, and at all times thereafter, to bargain collectively with Local No. 440 and thereafter its successor Local No. 983 as the exclusive representative of all its employees in such unit, the Respondent has engaged and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act, upon the ground that such conclusion is not based upon any proper finding or any substantial evidence.

60. Excepts to Conclusion of Law No. 8 to the effect that the labor practices of Respondent constitute unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act, because there is no substantial evidence supporting the conclusion that the Respondent engaged in any unfair labor practices.

RECOMMENDATIONS

61. Excepts to the recommendation that the Respondent cease and desist from dominating or interfering with the administration of the Association or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to the Association or to other labor organization of its employees, upon the ground that there is no substantial evidence supporting a finding that the Respondent has been engaged in any of such practices.

62. Excepts to the recommendation that the Respondent cease and desist from giving effect to or performing the contract of June 1, 1942, with the Association, or any extension or renewal thereof, or any other agreements, understandings or arrangements entered into with the Association respecting rates of pay, wages, hours of work, or other conditions of employment, upon the ground that the said recommendation is not based upon any substantial evidence, proper findings or proper conclusions of law.

63. Excepts to the recommendation that Respondent cease and desist from discouraging membership in Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983 and the International Association of Machinists, Local No. 198, or any other labor organization of its employees, by discouraging, laying off or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of employment, upon the ground that said recommendation is not based upon any substantial evidence, proper findings or proper conclusions of law.

64. Excepts to the recommendation that Respondent cease and desist from refusing to bargain collectively with Local Union No. 983 as the exclusive representative of the drivers of Pocatello, excluding the foreman, in respect to rates of pay, wages, hours of employment and other conditions of employment, upon the ground that said recommendation is not based upon any substantial evidence, proper findings or proper conclusions of law.

65. Excepts to the recommendation that Respondent cease and desist from in any other manner interfering with, restraining or coercing its employees in the exercise of the right of self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining, or other mutual aid or protection as

guaranteed by Section 7 of the Act, upon the ground that said recommendation is not based upon any substantial evidence, proper findings or proper conclusions of law.

66. Excepts to the recommendation that Respondent completely disestablish the Association as the representative of any of its employees for the purpose of dealing with the Respondent concerning grievances, labor disputes, wages, rates of pay, hours of work, and other conditions of employment, upon the ground that said recommendation is not based upon any substantial evidence, proper findings or proper conclusions of law.

67. Excepts to the recommendation that Respondent withdraw all recognition from the Association as the representative of any of its employees for the purpose of dealing with the Respondent concerning grievances, labor disputes, wages, rates of pay, hours of work and other conditions of employment, and completely disestablish the Association as such representative, upon the ground that said recommendation is not based upon any substantial evidence, proper findings or proper conclusions of law.

68. Excepts to the recommendation that the Respondent offer to the employees listed in Appendix "A" and Wayne Douglas immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, upon the ground that said recommendation is not based upon any substantial evidence, proper findings or proper

conclusions and that said employees were in each and every instance discharged for reasons having no connection with the Act, and upon the further ground that some of said employees refused re-employment when offered by the Respondent, others were re-employed and thereafter left voluntarily.

69. Excepts to the recommendation that Respondent make whole the employees listed in Appendix "A" and Wayne Douglas for any loss of pay that may have been suffered by reason of any act on the part of the Respondent, by payment to each of them a sum of money equal to that which he normally would have received as wages from the date of the discharge to said proposed offer of reinstatement, less his net earnings during said period, upon the ground that said recommendation is not based upon any substantial evidence, proper findings or proper conclusions of law.

70. Excepts to the recommendation that Respondent upon request bargain collectively with Teamsters Local No. 983 as the exclusive representative of the Respondent's truck drivers at Pocatello, excluding the foremen, in respect to rates of pay, wages, hours of employment and other conditions of employment, upon the ground that there is no substantial evidence proving that said Local has the right or authority to represent Respondent's truck drivers in any such respect, or at all, and upon the further ground that there is no proper finding or conclusion upon which to base this recommendation.

71. Excepts to the recommendation that Respondent post immediately and in conspicuous places in its plant at Pocatello, on the premises occupied by Respondent at Boise, Idaho, and Baker, Oregon, and maintain for a period of at least sixty consecutive days from the date of posting, notices reciting the matters and things recommended in sub-division (f) on page 32 of said Report, upon the ground that said recommendation is not supported by any substantial evidence, proper findings or proper conclusions of law.

72. Respondent excepts generally to each and every adverse finding and conclusion of law and recommendation made in said Intermediate Report, upon the ground that a full, fair and impartial consideration of all of the evidence introduced in this cause clearly establishes the fact that the Respondent has not been guilty of violating any of the provisions of said Act.

II.

73. Excepts to the refusal of the Trial Examiner to grant the Motion of Respondent to dismiss the consolidated complaint, which motion was made at the close of the Board's case, and after the Board had adduced its evidence in support of the Consolidated Complaint and had rested. Said motion was predicated upon the fact that the proof adduced by the Board failed to prove a violation of any of the provisions of the National Labor Relations Act and is set forth at length on pages 925 to 945 inclusive of the record of said pro-

ceedings, to which record Respondent respectfully refers, and by reference makes said motion therein appearing and the ruling thereon as part hereof, as fully as if set forth herein at length. The ruling on said motion appears at page 949 of the record.

III.

74. Excepts to the failure of the Trial Examiner to grant its motion to dismiss the Consolidated Complaint, which motion was made at the conclusion of all of the evidence and after the Board first had rested, and is a renewal of the motion made at the conclusion of the Board's case and an adoption of the language thereof, and which motion appears at page 1595 of the record.

IV.

75. Excepts to the ruling of the Trial Examiner shown on page 93 of the record overruling the motion of counsel for the Respondent to strike the testimony of witness Lee Owen regarding testimony relating to matters which occurred months after the violations alleged in the complaint and overruling counsel's objections to testimony from the witness Owen on the ground that there is nothing shown by competent evidence that Local 983 inherited any of the rights or privileges of Local No. 440, and upon the further ground that the Charter of Local 440 was cancelled and picked up and ceased to exist.

76. Excepts to all of the testimony of witness Owen relating to the acts of Local 983 and objected by counsel and overruled on page 93 of the record.

77. Excepts to the ruling of the Trial Examiner to the objection of counsel for the Respondent to the question shown on page 413 of the record: "What conversation do you recall and when did it occur", upon the ground that such question was incompetent for any purpose, the Idaho Gas & Oil Company not being a party to this action and not owned by the Idaho Refining Company but by independent and individual stockholders.

78. Excepts to the rejection by the Trial Examiner of the offer of counsel for Respondent to prove that James Ayers was discharged from the Union Pacific stage lines for two reasons set forth in the record, and which rejection appears on page 458 of the record.

79. Excepts to the Examiner's permitting an entire line of inquiry regarding conversation between R. E. Stiff and the witness Loren R. McBride, which ruling on the objection of counsel for the Respondent appears at page 740 of the record.

Respectfully submitted,

IDAHO REFINING
COMPANY,

By HENRY D. MOYLE, D. L. M.
DAVID L. McKAY,

Residing at Salt Lake City,
Ut.

A. L. MERRILL, D. L. M.

Residing at Pocatello, Idaho,
Its Attorneys.

In the United States Circuit Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

IDAHO REFINING COMPANY,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Chief of the Order Section, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board—Series 2, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of a consolidated proceeding had before said Board entitled, “In the Matter of Idaho Refining Company and Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, A.F.L., and Idaho Refining Company and International Association of Machinists, Local No. 198, affiliated with the A.F. L.,” the same being Cases Nos. C-2380 and C-2381 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Stenographic transcript of testimony held before Mortimer Riemer, Trial Examiner for the National Labor Relations Board, on August 3, 4, 5, 6, 7, 10, 11, 12, 13, 1942, together with all exhibits introduced in evidence.

(2) Copy of Trial Examiner Riemer's Intermediate Report, dated October 20, 1942.

(3) Copy of order transferring case to the National Labor Relations Board, dated October 22, 1942.

(4) Copy of respondent's request for oral argument before the Board.

(5) Copy of respondent's telegram, dated November 2, 1942, requesting an extension of time to file exceptions and brief.

(6) Copy of telegram, dated November 2, 1942, granting all parties an extension of time to file exceptions and brief.

(7) Copy of respondent's exceptions to the Intermediate Report.

(8) Copy of notice of hearing for the purpose of oral argument, dated December 19, 1942.

(9) Copy of list of appearances at the oral argument held before the Board on January 7, 1943.

(10) Copy of Decision and Order issued by the National Labor Relations Board, February 25, 1943, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof the Chief of the Order Section of the National Labor Relations Board,

being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 11th day of October, 1943.

[Seal]

JOHN E. LAWYER,

Chief, Order Section.

NATIONAL LABOR RELATIONS BOARD.

[Title of Circuit Court of Appeals and Cause.]

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U.S.C. § 151 et seq.), respectfully petitions this Court for the enforcement of its order against respondent, Idaho Refining Company, its officers, agents, successors, and assigns. The consolidated proceeding resulting in said order is known upon the records of the Board as "In the Matter of Idaho Refining Company and Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, A.F.L., Case No. C-2380, and In the Matter of Idaho Refining Company and Inter-

national Association of Machinists, Local No. 198, affiliated with the A.F.L., Case No. C-2381.”

In support of this petition, the Board respectfully shows:

(1) The unfair labor practices which are the subject of the present proceeding occurred in the State of Idaho within this judicial circuit. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

2. Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board, on February 25, 1943, duly stated its findings of fact, conclusions of law and issued an order directed to the respondent, its officers, agents, successors, and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Idaho Refining Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of Idaho Refining Company Employees' Benefit and Labor Association, or with the forma-

tion or administration of any other labor organization of its employees, and from contributing financial or other support to said labor organization or any other labor organization of its employees;

(b) Recognizing or in any manner dealing with Idaho Refining Company Employees' Benefit and Labor Association as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment;

(c) Performing or giving effect to the contract of June 1, 1942, with Idaho Refining Company Employees' Benefit and Labor Association, or to any amendment, extension, or renewal thereof, or to any other contract, agreement or understanding entered into with said Association relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment;

(d) Discouraging membership in Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, or International Association of Machinists, Local No. 198, both affiliated with the American Federation of Labor, or any other labor organization of its employees, by discharging or refusing to reinstate, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment;

(e) In any other manner interfering with, restraining, or coercing its employees in the exer-

cise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Idaho Refining Company Employees' Benefit and Labor Association as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish said Association as such representative;

(b) Offer to the employees listed in Appendix A, except Boyd Cornia, Wayne Douglas, Henry Henrickson, A. Stanley Merrill, and Myron D. Whitesides, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;

(c) Make whole each of the employees ordered reinstated in paragraph 2 (b) of this Order for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages from the date of the respondent's discrimination against him to the date of the respondent's

offer of reinstatement, less his net earnings during such period;

(d) Make whole R. E. Miller for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages from the date of the respondent's discrimination against him to the date of his reemployment with the respondent as a truck driver, less his net earnings during such period;

(e) Post immediately in conspicuous places at its plant at Pocatello, Idaho, and at the premises occupied or used by the respondent at Baker, Oregon and Boise, Idaho, and maintain for a period of not less than sixty (60) consecutive days from the date of posting, notices to its employees, stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), (c), (d), and (e) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a), (b), (c) and (d) of this Order; and (3) that the respondent's employees are free to remain or become members of Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, and International Association of Machinists, Local No. 198, both affiliated with the American Federation of Labor, and that the respondent will not discriminate against any employee because of membership or activity in those organizations;

(f) Notify the Regional Director for the Nine-

teenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

(3) On February 27, 1943, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to respondent's attorneys.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the consolidated proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence and the proceedings set forth in the transcript, and upon so much of the order made thereupon set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board and requiring respondent, its officers, agents, successors, and assigns, to comply therewith.

NATIONAL LABOR RELATIONS BOARD.

By HOWARD LICHTENSTEIN,
Assistant General Counsel.

Dated at Washington, D. C., this 11th day of October, 1943.

Appendix A

Leo Archibald	Leonard Fowler
James Ayers	Arthur Heckert
K. C. Brower	Henry Henrickson
S. R. Burkholder	Carl Hill
Guy Campbell	A. Stanley Merrill
Boyd Cornia	John Ray
Howard Davis	Leland Stanford
Wayne Douglas	P. P. Stanger
Victor Ellingford	Myron D. Whitesides
John Evans	

District of Columbia, ss:

Howard Lichtenstein, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

HOWARD LICHTENSTEIN,
Assistant General Counsel.

Subscribed and sworn to before me this 11th day of October 1943.

[Seal]

JOSEPH W. KULKIS,

Notary Public, District of
Columbia.

My commission expires April 15, 1947.

[Endorsed]: Filed Oct. 18, 1943. Paul P.
O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH
PETITIONER INTENDS TO RELY

Comes now the National Labor Relations Board, petitioner in the above proceeding, and, in conformity with the revised rules of this Court heretofore adopted, hereby states the following points as those on which it intends to rely in this proceeding:

1. Upon the undisputed facts, the Act is applicable to respondents and to the employees herein involved.

2. The Board's findings of fact are fully supported by substantial evidence. Upon the facts so found, respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1), (2), and (3) of the Act.

3. The Board's order is wholly valid and proper under the Act.

Dated at Washington, D. C., this 11th day of October 1943.

NATIONAL LABOR RELATIONS BOARD,

By HOWARD LICHTENSTEIN,
Assistant General Counsel.

[Endorsed]: Filed Oct. 18, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ANSWER TO PETITIONER'S PETITION FOR
ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Comes now the Respondent, Idaho Refining Company, a corporation, and answering the National Labor Relations Board's petition for enforcement of its order, respectfully:

(1) Admits paragraphs (1), (2), (3), and (4) of the said petition, except that Respondent denies that it has committed any unfair labor practices.

(2) Denies that the findings of the Trial Examiner, as adopted by the Board, and excepted to in the Statement of Exceptions heretofore filed with the Board by the Respondent (which statement is hereby referred to and made a part of this answer, as if fully set forth herein) are supported by the evidence, and denies that each of the findings is so supported.

(3) Denies that the order set forth in the said petition is valid, for the reason that the said order is based upon findings which are not supported by the evidence.

(4) Denies that the said order is valid, for the reason that it is not supported by the findings upon which it is based.

(5) Alleges that the conclusions of law and the said order and each part thereof are erroneous and unauthorized and without support of law, and should be reviewed and set aside.

Wherefore, the Respondent prays that the petition of the Board be denied; that the proceedings herein be reviewed by this Court, and that this Court set aside the said order of the board.

A. L. MERRILL,

HENRY D. MOYLE,

D.L.M.

Attorneys for Respondent.

State of Utah

County of Salt Lake—ss.

Henry D. Moyle, being first duly sworn, states that he is an officer of the Idaho Refining Company, respondent herein, to-wit, its vice-president; that he is authorized to make and does make this verification in behalf of the said respondent; that he has read the foregoing answer and knows the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

HENRY D. MOYLE.

Subscribed and sworn to before me this 23rd day of October, 1943.

[Seal] DAVID L. McKAY,
Notary Public, residing at
Salt Lake City, Utah.

My commission expires Feb. 2, 1945.

[Endorsed]: Filed Oct. 27, 1943. Paul P.
O'Brien, Clerk.

ORDER TO SHOW CAUSE

CCA #10583

United States of America, ss:

The President of the United States of America
To International Association of Machinists, Att:
Paul R. Hutchings, Machinists Bldg., Washing-
ton, D. C.,

GREETING:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 18th day of October, 1943 a petition of the National Labor Relations Board for enforcement of its order entered on February 25, 1943 in a proceeding known upon the records of the said Board as

“In the Matter of Idaho Refining Company and Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, A.F.L., Case No. C-2380, and in the Matter of Idaho Refining Company and Interna-

tional Association of Machinists, Local No. 198, affiliated with the A.F.L., Case No. C-2381,"

and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Charles E. Hughes, Chief Justice of the United States, this 18th day of October in the year of our Lord one thousand, nine hundred and forty-three.

[Seal]

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Received copy of this order to show cause, with attached copy of petition this 25th day of Oct. 1943.

INT. ASSN. OF MACHINISTS,

By L. O. THOMAS,

Research Dept.

Rec'd Oct. 25, 1943.

[Endorsed]: Filed Oct. 28, 1943. Paul P. O'Brien, Clerk.

ORDER TO SHOW CAUSE

CCA #10583

United States of America, ss:

The President of the United States of America

To Idaho Refining Co., Pocatello, Idaho; Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, A. F. of L., 140 South First Ave., Pocatello, Idaho; International Association of Machinists, Local No. 198, A. F. of L., 316 North 9th Ave., Pocatello, Idaho and Idaho Refining Co. Employees' Benefit and Labor Association, 720 E. Oak, Pocatello, Idaho

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Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 18th day of October, 1943 a petition of the National Labor Relations Board for enforcement of its order entered on February 25, 1943 in a proceeding known upon the records of the said Board as

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You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Charles E. Hughes, Chief Justice of the United States, this 18th day of October in the year of our Lord one thousand, nine hundred and forty-three.

[Seal] PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

MARSHAL'S RETURN

United States of America

District of Idaho—ss:

I hereby certify and return that I received the hereto annexed Order to Show Cause on the 26th day of October, 1943, and have served the same in the following manner, to wit:

On the Idaho Refining Co., by exhibiting the original and by handing to and leaving with William McMillan, Secretary of the said Idaho Refining Co., a true and correct copy of the said Order together with a copy of the Petition of the National Labor Relations Board attached thereto, at a point 3 miles

West of Pocatello, Idaho, on the 27th day of October, 1943;

On the International Association of Machinists, Local No. 198, A. F. of L. by exhibiting the original and by handing to and leaving with John Strechenfinger, Secretary of the said International Association of Machinists, Local No. 198, A. F. of L., a true and correct copy thereof, together with a copy of the Petition of the National Labor Relations Board attached thereto, at Pocatello, Idaho, on the 27th day of October, 1943;

On Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, A. F. of L., by exhibiting the original and by handing to and leaving with Ray Jones, Secretary of the said Teamsters, Chauffeurs, Warehousemen's and Helpers Local No. 983, A. F. of L., a true and correct copy of the said Order together with a copy of the Petition of the National Labor Relations Board attached thereto, at Idaho Falls, Idaho, on the 29th day of October, 1943;

On the Idaho Refining Co. Employees Benefit and Labor Association by exhibiting the original and by handing to and leaving with D. L. Hill, as Secretary-Treasurer of the said Idaho Refining Co. Employees' Benefit and Labor Association, a true and correct copy of the said Order, together with a copy of the Petition of the National Labor Relations Board attached thereto, at a point 3 miles West of Pocatello, Idaho, on the 1st day of November, 1943.

Dated this 1st day of November, 1943.

ED. M. BRYAN,

U. S. Marshal for the District
of Idaho,

by: DAVE NICHOLS,
Deputy.

[Endorsed]: Filed Nov. 4, 1943. Paul P. O'Brien,
Clerk.

BOARD'S EXHIBIT No. 2

United States of America

National Labor Relations Board

I, Beatrice M. Stern, Executive Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of:

Order Designating Trial Examiner in the Matter of Idaho Refining Company and Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, A.F.L. and Idaho Refining Company and International Association of Machinists, Local No. 198, affiliated with the AFL. Cases Nos. XIX-C-1071 and XIX-C-1082.

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 29th day of July A. D. 1942, at Washington, D. C.

[Seal]

Executive Secretary.

[Title of Board and Causes.]

ORDER DESIGNATING TRIAL EXAMINER

Charges having been filed in this matter, and this matter having been set for hearing, and consolidated for the purpose of hearing, and the Board having considered the matter and being advised in the premises,

It Is Hereby Ordered that Mortimer Riemer act as Trial Examiner in the above cases and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 2 as amended of the National Labor Relations Board.

Dated, Washington, D. C., July 29, 1942.

[Seal]

GEO. O. PRATT

George O. Pratt

Chief Trial Examiner

United States of America
Before The National Labor Relations Board
Nineteenth Region

Case No. XIX-C-1071

In the matter of

IDAHO REFINING COMPANY

and

TEAMSTERS, CHAUFFEURS, WAREHOUSE-
MEN & HELPERS, Local No. 983, A F L.

Case No. XIX-C-1082

In the Matter of

IDAHO REFINING COMPANY

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, Local 198, affiliated with the A F
of L.

TESTIMONY

District Court Room
Post Office Building
Pocatello, Idaho,
Monday, August 3, 1942

The above-entitled matter came on for hearing
at 10:00 a. m. pursuant to notice, as follows:

Before: Mortimer Riemer, Trial Examiner.

Appearances:

Louis S. Penfield, 812 Vance Building, Seattle, Washington, Attorney for the National Labor Relations Board. [1*]

Gerald P. Leicht, 1095 Market Street, San Francisco, California, appearing for the National Labor Relations Board, as attorney.

Henry A. Moyle, 720 Newhouse Building, Salt Lake City, Utah, appearing for Idaho Refining Co., respondent.

A. L. Merrill, Pocatello, Idaho, appearing for respondent, Idaho Refining Company.

David L. McKay, 720 Newhouse Building, Salt Lake City, Utah, appearing for respondent, Idaho Refining Company. [2]

GILBERT D. MOYLE

was thereupon called as a witness by and on behalf of the Board, and, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (Mr. Penfield) Mr. Moyle, are you an employee of the Idaho Refining Company?

A. Yes, sir. [14]

Q. In what capacity?

* Page numbering appearing at top of page of original Reporter's Transcript.

(Testimony of Gilbert D. Moyle.)

A. Manager—general manager.

Q. General manager of all the operations?

A. General manager of Idaho Refining Company, yes, sir.

Q. Where is your office?

A. West of Pocatello,—northwest.

Q. How long have you held your position?

A. Well, I came up in 1938, and I think it was in 1940 that I was made general manager.

Q. You have been general manager ever since 1940, is that correct?

A. I think,—as I recall, 1940.

Q. Would that be in January, 1940, the first of the year?

A. It seems to me that it must have been in October, as I recall it. I can't refresh my memory without looking at the record on that.

Q. What was your position with the company prior to that time?

A. I was acting as more or less sales manager and in charge of the expansion of our service station business.

Q. Were you located here in Pocatello?

A. Yes, sir.

Q. The same office? A. Yes.

Q. Who was general manager at that time?

A. The general manager was more or less vested in Mr. M. B. [15] Kaye.

Q. What is the correct name of the company?

A. Idaho Refining Company.

Q. What is the place of incorporation?

A. Nevada.

(Testimony of Gilbert D. Moyle.)

Q. Will you describe for us the general nature of the business done by the Idaho Refining Company?

A. Well, it is the refining of petroleum, crude oil, making petroleum products, and the distribution of the same.

Q. How is that distribution carried out?

A. Well, various ways,—through our own—some stations that are owned; and some that are not owned and controlled, some by major oil companies' purchases from our company, and so forth.

Q. What is the territory in which your products are distributed? A. Practically all in Idaho.

Q. What raw materials are used in your business? A. We have our crude shipped in.

Q. Where does that come from?

A. Montana and Wyoming.

Q. All of your crude? A. All our crude.

Q. Do you have any other raw materials?

A. Not that we manufacture, no.

Q. You do have other raw materials? [16]

A. We have other materials that we sell that we don't manufacture.

Q. What are those?

A. We sell lubricating oil which we don't manufacture, and part of that in the early stages was shipped in like most of it, and now only a very small part is, and we purchase that now here in Idaho.

Q. From whom do you purchase it?

(Testimony of Gilbert D. Moyle.)

A. From the Co-op Oil Company at Caldwell, Idaho.

Q. Where is that oil produced?

A. I don't know where they purchase it.

Q. Is it produced in Idaho?

A. I doubt it. There isn't any oil produced in Idaho. They have a plant for making kerosene, and I wouldn't be surprised that they do some blending. I wouldn't be sure.

Q. Do you also purchase gasoline?

A. We have purchased gasoline a little this year only. We have never purchased any gasoline outside before.

Q. In terms of dollar value, can you give us the total dollar value of the raw materials that you purchased during the year 1941, approximately?

A. No,——

Mr. Penfield: May we go off the record for a minute?

Trial Examiner Riemer: Off the record. The hearing will recess for five minutes. [17]

(Whereupon a recess was taken).

Trial Examiner Riemer: On the record.

Mr. Penfield: Will you read the last question?

(Last question read aloud by the reporter as hereinabove recorded.)

A. I think that the answer to that question was about \$1,300,000.

Q. \$1,328,000 was the amount given.

Mr. Moyle: If you care to, you could read the figures just given and ask a leading question.

(Testimony of Gilbert D. Moyle.)

Q. (Mr. Penfield) All right. In the off-the-record discussion, the parties agreed the figure of the raw materials purchased in 1941 was approximately \$1,328,000, of which \$1,230,000 was crude oil, all of which was shipped in to the refinery at Pocatello from points outside of Idaho. Is that correct? A. I think so, yes.

Trial Examiner Riemer: You mean just the crude oil was shipped in?

Mr. Penfield: All the crude oil in the amount of \$1,230,000. We also agreed that of the raw materials, in excess of 90 per cent. of the raw materials used was shipped in to Idaho from points outside the State of Idaho.

Mr. Moyle: Would you read that?

(Whereupon the last statement hereinabove recorded was read aloud by the reporter.)

Mr. Moyle: You mean to say that approximately 90 per cent. was [18] shipped in?

Mr. Penfield: Well, "approximately" is close enough.

Mr. Moyle: I think that is what it had better be, —approximately 90 per cent.

Mr. Penfield: All right.

Q. (Mr. Penfield) We also agreed that Ethyl Compound in the amount of \$47,000 was purchased during the year 1941. Was that all shipped in from points outside the State of Idaho? A. Yes.

Q. We also agreed that fuel oil in the amount of approximately \$42,000 was purchased during the

(Testimony of Gilbert D. Moyle.)

same period. Was all that shipped in from points outside the state? A. No, I don't think so.

Q. Where was that secured?

A. I am not certain as to that figure on fuel oil, but we are only purchasing a very small amount of fuel oil—it seems to me that is excessive.

Q. Well, that was in 1941.

A. Well, that is possible, but it seems to me our purchases would not have been over about two thousand in 1941—well, that is possible—yes, I think possibly that is possible. I was not considering the heavy oil.

Q. I understood that was the figure given.

A. We will accept that. I think that is possible.

Q. Did I understand you to say that was or was not shipped from [19] outside the state?

A. It would be shipped in from outside the state.

Q. What are the finished products of the company?

A. Well, we have just mainly two, mostly gasoline, the other is a heavy fuel oil.

Q. In the off-record discussion, we agreed that the gross sales of the company in the year 1941 amounted to approximately \$1,900,000, is that correct?

A. I think that would be approximately correct.

Q. And we also agreed that approximately 10 per cent, was shipped to points outside the state of Idaho?

A. I think that would be approximately correct.

(Testimony of Gilbert D. Moyle.)

Q. Did the trucks of the company travel to points outside of Idaho? A. Yes.

Q. And into what states did they go?

A. We went into Wyoming and Nevada, and I think into Oregon and Washington in 1941.

Q. And Utah, also? A. And Utah.

Q. Can you give me a list of the names of the officers of the company—

Trial Examiner Riemer: Just a minute.

Q. (Trial Examiner Riemer) Why did those trucks go into those states, for what purpose? [20]

A. What?

Q. For what purpose did they go into the states you named? A. Mainly the transfer of gas.

Q. To deliver gasoline?

A. To deliver gasoline.

Q. (Mr. Penfield, continuing) Could you give me a list of the names of the officers of the company during the year 1941?

Mr. Moyle: I will answer for him, if I may. K. W. Yates, A. H. Kelson,—these are directors.

Mr. Penfield: My question was, first, your officers. I also want to get the directors in.

The Witness: Well, in 1941, Gilbert S. Sheets was president; Henry D. Moyle, vice-president; Frank L. Copening was secretary, and John H. Peterson, treasurer.

Q. (Mr. Penfield, continuing) Were those all the officers?

A. Those were all the officers, yes.

Q. You were general manager? A. Yes.

(Testimony of Gilbert D. Moyle.)

Q. Have there been any changes in the officers up to the present time? A. Yes.

Q. What were those changes?

A. Well, the changes have been, the Army got Frank Copenig, so he was replaced by William McMillan.

Q. When was he so replaced? [21]

A. He was replaced, I think it was, about the first of July of this year.

Q. Was that immediately after Mr. Copenig left?

A. About 30 days, and Mr. Peterson, as I recall, left about the first of April.

Q. Who replaced him?

A. He was replaced by B. J. Albertson.

Q. Are those the only changes in the officers?

A. The office of president, Gilbert S. Sheets,—he resigned, and it hasn't been filled.

Q. When did he resign?

A. It seems to me about the first of July of this year.

Q. What were the names of the members of the Board of Directors in 1941?

Mr. Moyle: K. W. Yates; A. H. Kelson; W. A. Madsen; O. C. Allen; S. M. Covey; E. S. Sheets; G. S. Sheets; Gilbert D. Moyle, and H. D. Moyle.

Mr. Penfield: Did you name two Sheets?

Mr. Moyle: Two Sheets, yes.

Mr. Penfield: What were the initials?

Mr. Moyle: Gilbert S. and E. S.

(Testimony of Gilbert D. Moyle.)

Q. (Mr. Penfield) Have there been any changes since 1941?

A. Yes, in 1941, as I recall, W. A. Madsen resigned, or in 1942, as I recall it. He may have resigned before the first of the year, but Dr. W. R. Calderwood was elected in March of this [22] year at the annual meeting. [23]

Q. How many persons are employed out there?

A. In the refinery?

Q. Well, in the entire operation.

A. Oh, that varies from time to time. I would say offhand, at this time we have possibly about 90.

Trial Examiner Riemer: Do I understand by your question that you want to know the number of employees in the refining plant in Pocatello?

Mr. Penfield: I want to know the total number of employees of the company.

Trial Examiner Riemer: That would be all over the state?

Mr. Penfield: I think that I can clear it up.

I want to know the total number of employees of the company, then I want them broken down.

The Witness: Well, I was just,—to just approximate, I would say 90. I can't tell you offhand.

Q. (Mr. Penfield, continuing) That is the total number?

A. That would be approximately the total number.

Q. Now, of these employees, how many work in the refinery, proper?

(Testimony of Gilbert D. Moyle.)

A. Well, including the mechanics, drivers, refinery men, and [24] all, I would say possibly 65 or 70.

Q. Well, excluding the drivers and the mechanics?

A. Well, they are all under one payroll there. I could take it off that for you. I couldn't tell you exactly. I am trying to give you approximately the figure.

Q. How many drivers do you have?

A. Well, that varies almost from week to week. I think that we have had as high as about 24 or 25 drivers or 26, and as low as about 14.

Q. How many mechanics do you have?

A. Well, we have had as high as 6 mechanics, I think, with the shop foreman, and as low as 2 or 3. It has varied with the growth of our business and the season.

Q. About how many office employees do you have?

A. I would say offhand, 20 or 15.

Q. And the remainder of the employees work in the refinery proper?

A. Yes, the refinery proper is pretty well automatic, you know. We don't have so many in proportion to the operation as you might think.

Q. Does that run 24 hours a day?

A. Yes, runs three shifts a day—8 hours. [25]

Q. Did you ever have anyone in your employ by the name of Webb?

A. Yes.

Q. What was his position?

A. He had the position of secretary.

(Testimony of Gilbert D. Moyle.)

Q. Was that Arch Webb?

A. Yes. He is now a captain in the army.

Q. Was he the predecessor of Mr. Copening?

A. Yes.

Q. When did Mr. Copening supersede him?

A. Copening came about a year ago last December; that would be about 1940, December 1st of 1940. Was it 1940?

Yes, 1940, December 1st. Webb left about that same time, the same day.

Q. The Idaho Refining Company, is it owned by a parent corporation? A. No.

Q. Does the Idaho Refining Company own the Covey Gas & Oil Company? A. Yes.

Q. They own all the stock in the Covey Gas & Oil Company? A. Yes, I think they do.

Mr. Merrill: That is the Covey Gas & Oil Company of Idaho.

A. Not of Utah. You see, there is the Covey Company of Wyoming and Utah which isn't part of this company. [31]

Mr. Merrill: He has a company in Idaho, too.

The Witness: This is the Covey Gas & Oil Company of Idaho.

Q. (Mr. Penfield, continuing) Does the Company own any interest in the Covey Gas & Oil of Utah or Wyoming? A. No, sir.

Q. None whatever?

A. No interest whatever.

Q. What is the connection of the Idaho Refining Company with Gas Save of Idaho?

(Testimony of Gilbert D. Moyle.)

A. I think Gas Save was an old organization Covey had that was in the Covey Gas & Oil Company.

Mr. Moyle: Of Utah.

Q. (Mr. Penfield, continuing) Was that a separate corporation?

A. I am not certain whether that was a corporate set-up or not.

Mr. Merrill: We object to any further testimony about it.

The Witness: I don't know about that.

Mr. Merrill: We object to testimony relative to Gas Save Company because it isn't involved.

Mr. Penfield: I think it is relevant to establish the subsidiaries of the company.

Mr. Merrill: It isn't a subsidiary.

Trial Examiner Riemer: The objection is sustained.

Q. (Mr. Penfield, continuing) What is the connection of the company with Idaho Southern Gas & Oil Company? [32]

A. Idaho Southern hasn't been in existence, I don't think, for two years.

Q. Does it still have a corporate charter?

A. I am not certain whether we have ever kept up our corporate name,—I don't know whether or not we ever paid the fee at Boise. It seems to me that it was in 1939 or 1940 that we closed the books of that company.

Q. What was the connection of the Idaho Southern Gas & Oil Company with the company?

(Testimony of Gilbert D. Moyle.)

A. It was a separate corporation operating for the purpose of distributing petroleum products.

Q. Was it formerly owned by the Idaho Gas & Oil Company?

A. No, I think, about I would say 42 per cent. was owned outside. I am not quite familiar with that at this time.

Q. You say that it hasn't been operating for the past two years?

A. My recollection is that we discontinued the operation of that company—was it in 1940 or 1941?

About two years,—1940, as I recall it.

Q. What is the connection of the company with the Idaho Gas & Oil Company?

A. We have no connection, with the exception that we sell the gasoline. It has been a separate corporation.

Q. Is any of the stock owned by the Idaho Refining Company?

A. I think not. I am not certain of that. I don't think there [33] is a share of stock owned by Idaho Refining Company.

Q. Is that an Idaho corporation? A. Yes.

Q. Where is the principal place of business?

A. Principal place of business was in Boise, then we transferred,—

Trial Examiner Riemer: Whose place of business?

A. We principally opened that company up when we opened the Boise area.

(Testimony of Gilbert D. Moyle.)

Q. (Trial Examiner Riemer) —you mean——

A. Idaho Gas & Oil Company, yes. We had some other business around the country, but it was principally Boise business.

Mr. Moyle: Do you mean the statutory place of business of that company?

Mr. Penfield: Yes.

Mr. Moyle: Of course, the best evidence would be the record of the Secretary of State. I think at Pocatello, isn't it?

A. We later transferred all of our operations.

Mr. Moyle: It is either Boise or Pocatello?

A. Yes. We of course maintained our office which is in Boise, but I am not certain where the principal—I don't recall.

Q. (Mr. Penfield, continuing) Who were the officers of the Idaho Gas & Oil Company?

A. Well, we have changed those of recent date.

Q. Who were they in 1941? [34]

A. The Army has taken so many of our men, we have had to change with the Army.

Q. Who were they, in 1941?

A. Well, I think in 1941 John Peterson was president. He was our auditor.

Q. He was an officer, was he not, of the Idaho——

A. Yes, sir; of Idaho Refining Company.

Q. Go ahead.

A. I can't tell you offhand who the other officers are. I think that Mr. Copening was an officer of this company. I don't know whether Secre-

(Testimony of Gilbert D. Moyle.)

tary or Treasurer. I could get that information for you, if you like.

Q. Who was the manager?

A. Mr. Copening directed the affairs, and Mr. Webb before his time.

Q. Did the Idaho Gas & Oil Company have separate offices from the Idaho Refining Company?

A. We had separate offices in Boise, and we still maintain those offices there, and we keep records here at Pocatello.

Q. Who is the present manager who succeeded Mr. Copening?

A. The present manager is Mr. MacMillan.

Q. Did Mr. Copening, Mr. Webb and Mr. MacMillan all maintain their offices here at Pocatello?

A. Yes. Mr. Copening for a good deal of his time prior to December of 1940 was in Boise as manager of the Idaho Gas & Oil [35] Company operations there.

Q. What was the connection of Mr. M. L. Smith with the Idaho Gas & Oil?

A. Mr. Smith is manager of the Covey Gas & Oil Company, and he has no connection with the refining company or the Idaho Gas & Oil Company.

Q. What was the connection of Harrison Jones?

A. Harrison Jones is bookkeeper and auditor.

Q. For Covey or the Idaho Gas & Oil?

A. That is for Covey.

Q. Is it a separate group of employees here in

(Testimony of Gilbert D. Moyle.)

Pocatello who are working for Idaho Gas & Oil Company?

A. Yes, sir; they have their own bookkeeping system and their own employees.

Q. Do they have separate offices?

A. Well Covey had their offices here in the Central Building in Pocatello for three years, I think, and then we cut down our overhead. It has been quite a struggle, and we built an addition to our offices at the Refinery and cut out that rent downtown.

Q. (Trial Examiner Riemer) Are you talking about Covey?

A. Yes. I thought that you asked about both.

Q. (Mr. Penfield, continuing) I wanted to know if the Idaho Gas & Oil Company maintained a separate office?

A. No, they used half of this same addition. We have it [36] lettered,—it says "Idaho Gas" on the door on half, and Covey's half has its half of the building,—the new addition.

Q. Are they in the same building with the Idaho Refining Company?

A. Yes, sir; they are under the same roof; it is an addition to our building.

Q. Are they in a separate office from the office of the Idaho Refining Company?

A. Yes. The Idaho Refining Company employees have a separate office but in the same building.

Q. Did Mr. Copening or Mr. Webb or Mr. Mac

(Testimony of Gilbert D. Moyle.)

Millan conduct the affairs in connection with both the Idaho Gas & Oil Company and the Idaho Refining Company?

A. From the same office, yes, sir; they had a separate office of their own, but conducted the business of both from our office.

Q. Who signs the checks of employees of the Idaho Gas & Oil Company?

A. The auditors sign, and they are countersigned by Mr. Webb and Mr. Copening and they have to have two signatures on the checks. They are separate checks of each company.

Q. Are they issued by the Idaho Gas & Oil Company?

A. Yes, they issue their own checks, and Covey issues their own checks.

Q. What is the purpose of the Idaho Gas & Oil Company?

A. Well, we have had other companies—a company operating our retail—handling our distribution, and they have made [37] money in the past. I don't know whether we will in the future, or not. It is pretty tough.

Q. Do they distribute the products of the Idaho Refining Company exclusively?

A. Well, outside of what we purchase outside. They do purchase equipment, accessories, and tires, so they have had in the past some other sources other than our company.

Q. Did they purchase any gasoline from other sources?

(Testimony of Gilbert D. Moyle.)

A. No, sir,—I hope not. Yes, I will take that back. We bought, in the Idaho Gas & Oil, the Boise end, we bought gasoline there for about—well, it was from June to January 5 of this year—June of last year—we bought about half a million gallons a month over there from the Shell Company.

Q. Does the Idaho Gas & Oil Company own service stations? A. Yes, sir.

Q. Where are they located?

A. Well, we have them located, I think, all in the state of Idaho. There is no outside stations that we own anywhere.

Q. They own trucks — I am speaking of the Idaho Gas & Oil Company?

A. Yes, they have their own truck fleet.

Q. Does that fleet operate from Pocatello?

A. No, they generally operate in our own district. We have some that come in and out of Pocatello, but not transporting [38] gasoline as a regular means of transportation. They haul gasoline for their own district or territory.

Q. How many districts do you have?

A. We have quite a number. It is broken up. You see, we have——

Trial Examiner Riemer: Whom do you mean by “we”? Excuse me, but the questions aren’t clear, Mr. Penfield. Will you read the question?

(Last question read aloud by the reporter as hereinabove recorded.)

Mr. Penfield: I will rephrase it.

(Testimony of Gilbert D. Moyle.)

Q. (Mr. Penfield, continuing) How many districts does the Idaho Gas & Oil Company have?

A. Well, we have a Nampa-Caldwell district; the Hammet district, the Meridian district, the Boise district, the King Hill district, the Glenns Ferry district, the Gooding district, and Fairfield district, the Jerome district, Buhl and Filer district, and the Twin Falls district, and we have the Oakley district—Rupert. I think that I mentioned Burley. It is broken up that way all over the whole state.

Q. When you say the Idaho Gas & Oil Company has districts, do you mean the Idaho Gas & Oil Company has offices in each one of these districts?

A. Well, we have representatives, we call them that, yes.

Q. Are these representatives operators of service stations?

A. Yes, they have their own wholesale business.

[39]

Q. What do you mean by their own wholesale business?

A. Well, they buy gas from the Idaho Gas, and distribute it around to the state and federal government and companies and some stations they lease, and some they are operating themselves.

Q. In addition to these districts, does the company maintain any other office than in Pocatello—the Idaho Gas & Oil Company?

A. We maintain quite a nice office in Boise.

(Testimony of Gilbert D. Moyle.)

Q. About how many employees are there at Boise?

A. Well, I think that we have had about five and six employees over there.

Q. Do you have a manager in Boise?

A. Yes, we do.

Mr. Moyle: When you say "we", you mean the Idaho Gas & Oil Company? A. Yes.

Q. (Mr. Penfield, continuing) I am sorry, I get off on that——

A. Well, I understood the question.

Q. The Idaho Gas & Oil Company?

A. Yes, we have a manager over there.

Mr. Moyle: Might I suggest that the witness refrain from using the word "we" in connection with these various companies?

Q. (Mr. Penfield, continuing) Does the Idaho Gas & Oil Company have a manager in Boise?

A. Yes. [40]

Q. What is the name of the manager?

A. W. D. Sheppard.

Q. What are his duties?

A. His duties over there are to sell gasoline and look after the general interests of the company.

Q. Does the Idaho Gas & Oil Company have trucks operating in Boise? A. Yes.

Q. Is Mr. Sheppard in charge of all the personnel in the Boise district?

A. Well, I would say so, pretty well.

Q. Would he hire and fire all of the personnel in that district?

(Testimony of Gilbert D. Moyle.)

A. No, no; he couldn't do that.

Q. Who would?

A. Well, it would have to be taken up—it has been taken up with Mr. Copening, in the past, or Mr. Webb, and if I am not mistaken, I have been consulted on it.

Q. What is your connection with the Idaho Gas & Oil Company?

A. I haven't any connection, except that we are interested in seeing that they keep selling our gasoline and get along and make money so that they can pay their bill to us. We take the same interest we have with Reliance Oil Company—they are operating out of here, out of Pocatello—we have that same interest, although we have no connection with them. [41]

Q. If there was a truck driver to be hired at Boise, would it be Mr. Sheppard who would hire the driver?

A. It has been done, yes.

Q. Does he generally hire the drivers in Boise?

A. I don't think so, as a general rule, without consulting with the Idaho Gas & Oil Company officials.

Q. Can you give me the names of the board of directors of the Idaho Gas & Oil Company?

A. I will get them for you if you want them, later. I don't like to give them from memory.

Mr. Penfield: Do you have those available, counsel?

Mr. Moyle: No, I haven't; I am sorry.

(Testimony of Gilbert D. Moyle.)

Q. (Mr. Penfield, continuing) Do you know Earl Stiff? A. Yes, sir.

Q. Who is he?

A. He is attached to our labor crew in the plant.

Q. Out here at the Pocatello plant?

A. Yes.

Q. Was that true in 1941?

A. Yes, he took some time off, I don't recall just when it was, but I think that he was there most of 1941.

Q. Do you know a man who is located in Baker, Oregon, by the name of Stiff? A. Yes.

Q. Is that the same individual? [42]

A. No, sir.

Q. Who is the individual in Baker, Oregon?

A. Oh, Earl—yes, sure, Earl Stiff—I was thinking of another. Earl Stiff, that is his initials, yes.

Q. Well, who is he?

A. Well, he was trucking in this area, and we employed him to do some trucking for the company.

Q. When did you first employ him?

A. Well, we bought his trucks in—oh, I cannot offhand remember the date. It seems to me it was in October, 1941, and at that time we employed him as our manager there over the trucking department.

Trial Examiner Riemer: Who is "we"?

The Witness: That is the Idaho Refining Company.

Q. (Mr. Penfield, continuing) Prior to October, did the Idaho Refining Company have any connection with Earl Stiff?

(Testimony of Gilbert D. Moyle.)

A. I think that he was working for Inland Empire Refineries before that time.

Q. He was working out of Baker?

A. That is his home, Baker.

Q. Will you describe just what occurred in October of 1941?

A. We purchased his truck equipment and put him on our payroll as manager, and he just looked after our interests over there.

Q. Was this an outright purchase, or a lease?

A. Outright purchase. [43]

Q. Had you ever had any lease arrangements with him prior to that time? A. No, sir.

Q. Had you ever had any lease arrangements with him at any time? A. I don't think so.

Q. Did you have any agreement, either oral or written, with Mr. Stiff, relative to the operation of trucks out of Baker? A. I don't think so.

Q. How was Mr. Stiff paid?

A. By the Idaho Refining Company once a month.

Q. Was that on a direct salary? A. Yes.

Q. Did he employ the drivers? A. Yes.

Q. Who paid the drivers?

A. We did,—Idaho Refining Company.

Q. How long did this arrangement continue?

A. Well, I think that it continued up until April of this year, or such a time—about the first of April, I think, is when we discontinued with his services. The payroll will show that. I can't tell you.

Q. During the time that you had this arrange-

(Testimony of Gilbert D. Moyle.)

ment with Mr. Stiff, did the trucks always operate out of Baker?

A. No, we operated them for a period of time out of our plant [44] here at Pocatello.

Q. But your testimony is that since April, Mr. Stiff has had no connection with the Company?

A. I think that it was April.

Q. Approximately? A. Yes. [45]

Q. You were speaking of a man by the name of Smith. Who was he? A. M. L. Smith?

Q. Yes.

A. He is manager of the Covey Gas & Oil Company.

Q. State whether or not he had any powers to hire or fire men?

A. Yes, he has hired and fired men.

Q. Now, with respect to these three companies of which you have spoken, Idaho Refining Company, Idaho Gas & Oil Company, [55] and the Covey Gas & Oil Company of Idaho, it is my understanding, and is this correct,—that the Covey Gas & Oil Company, the corporate stock is owned by the Idaho Refining Company? A. Yes.

Q. That is, the Covey Gas & Oil Company of Idaho? A. Yes.

Q. There is a distinction between the Covey Gas & Oil Company and the Covey Gas & Oil Company of Idaho, is there not? A. Yes.

Q. Covey Gas & Oil Company is a Utah corporation that owned service stations—

A. And property.

(Testimony of Gilbert D. Moyle.)

Q. And various items of property in various states? A. Yes.

Q. That is not the company of which you speak?

A. No, sir.

Q. The Covey Gas & Oil Company, the stock of which is owned by the Idaho Refining Company, is purely a subsidiary distributing company of the Idaho Refining Company products? A. Yes.

Q. And has no connection with Covey Gas & Oil Company, the other company of which you speak? A. No.

Q. That is correct? A. Yes.

Q. With reference to the Idaho Gas & Oil Company, I understood [56] you to say that the Idaho Refining Company does not own any of the corporate stock of the Idaho Gas & Oil Company, that is correct, is it not? A. Yes.

Q. The stock of the Idaho Gas & Oil Company is owned by individual people? A. Yes.

Q. Some of whom are owners of the Idaho Refining Company stock and some who are not?

A. Yes, that is correct.

Q. Is there any interlocking relationship at all between the Idaho Refining Company and Idaho Gas & Oil Company other than Idaho Gas & Oil Company is a substantial debtor of the Idaho Refining Company? A. That is correct.

Q. Idaho Refining Company sells its gasoline and oils to the Idaho Gas & Oil Company and they distribute it, is that the truth? A. Yes.

(Testimony of Gilbert D. Moyle.)

Q. The stations which the Idaho Gas & Oil Company operates are owned by whom?

A. By the Idaho Gas & Oil Company.

Q. And not by the Idaho Refining Company?

A. No, sir.

Q. So there are two distinct companies? [57]

A. Yes.

Q. I believe you mentioned the fact that some of the individuals interested in the Idaho Refining Company are also officers in the Idaho Gas & Oil Company, is that correct?

A. Yes.

Q. That is because of their corporate stock ownership in both companies?

A. Yes.

Q. The Idaho Refining Company's interest in the Idaho Gas & Oil Company is that of a creditor, and a company that distributes its products, is that true?

A. Yes, sir.

Q. Are you a stockholder in each company?

A. I don't think that I ever had any stock in the Idaho Gas & Oil Company. I think that I was supposed to purchase some, and never did. I am a stockholder of the Idaho Refining Company.

Q. You are not an officer of the Idaho Gas & Oil Company?

A. No, sir.

Q. And never have been one?

A. No, sir.

[58]

Redirect Examination

Q. (Mr. Penfield) Now, this clean-out that you refer to when you shut the plant down, how often does that occur?

(Testimony of Gilbert D. Moyle.)

A. Well, unfortunately in the beginning, it was occurring about [73] every two weeks, and we were terribly disrupted. After we have been able to get the plant running, we are now running as long as 30 days, and sometimes longer.

Q. How long will the plant be shut down?

A. We have been shutting down 10 days. The minimum is about 4 days.

Q. What percentage of the truck drivers usually assist you in this work?

A. It depends on just how our sales are. During our shutdown periods, we attempt to shut off our sales. When the shutdown period comes, naturally I inform the department to shut off deliveries, necessarily leaving some drivers out, and we have used the drivers and extramen that have been driving, on this work.

Q. Are they paid any extra compensation for this work?

A. No, they are paid regular driver's wages, whatever their wage has been in the plant.

Q. You testified, I believe, that you usually have somewhere around 20 drivers?

A. I testified that I thought the maximum we have had is about 24 or 25; and I think as low as 14.

[74]

Q. (Mr. Penfield) Mr. Moyle, can you identify those exhibits at the present time?

A. Yes, I had one of our bookkeepers okeh this.

Mr. Penfield: They have already been marked for identification, and I would now like to offer this

(Testimony of Gilbert D. Moyle.)

list of truckdrivers with the periods they began work, and the periods the work ended, as Board's Exhibit 3, and this list of truck drivers as of March 31, 1942, as Board's Exhibit 4.

Mr. Moyle: We have no objection to 3, but do object to 4 on the ground that it does not come within any of the proper issues of this case, and is immaterial and irrelevant.

Trial Examiner Riemer: May I see them, please?

Q. (Trial Examiner Riemer) Mr. Moyle, what is the source of the information contained on these sheets, Board's Exhibit 3, for identification, for example, both names and dates?

A. This shows the period that——

Mr. Moyle: He said the source of the information.

A. (Continuing) Oh, the source of the information—I received from our bookkeeper here at noon,——

Q. (Trial Examiner Riemer) Are those dates, for example, opposite the names on that exhibit listed taken from your payroll records?

A. Yes, that is as I understand it.

Trial Examiner Riemer: Board's Exhibit 3 may be admitted [79] in evidence.

(Whereupon the document heretofore marked as Board's Exhibit 3 for identification, was received in evidence.)

(Testimony of Gilbert D. Moyle.)

BOARD'S EXHIBIT No. 3
IDAHO REFINING COMPANY—TRUCK DRIVERS

Name	This column in pencil	Period began work	Period work ended
Leo Archibald, Trk Mechanic .....	.....	Jan 16-31, 1941	Nov 1-15, 1941
James Ayers	No date	Sept 1-15, 1938	"
S. R. Burkholder	10/21	Feb 16-31, 1940	"
K. C. Brower .....	.....	Jan 18-31, 1941	"
Guy Edward Campbell	9/29	June 16-30, 1941	"
Edward Boyd Cornia	10/ 1	May 16-31, 1940	"
Howard Lee Davis	9/29	June 16-39, 1941	"
Victor Ellingford	9/29	Sept 1-15, 1938	"
John P. Evans	9/29	Sept 16-39, 1939	"
Leonard Fowler	9/29	Sept 1-15, 1939	"
Arthur Leroy Heckert	9/29	Mar 1-15, 1940	"
H. H. Henriksen	9/30	Oct 1-15, 1938	"
Carl E. Hill	9/29	Jan 1-15, 1940	"
A. Stanley Merrill	10/ 2	April 16-30, 1939	"
Robt. W. Patterson	9/29	Jan 1-15, 1940	"
John Ray	9/29	May 16-31, 1941	"
Leland William Stanford	10/21	July 1-15, 1941	"
Parley P. Stanger	9/30	Feb 16-29, 1940	"
R. Eleazar Miller	10/ 2	April 16-30, 1941	"
Myron D. Whitesides	No date	July 16-31, 1940	Sept 16-30, 1940
[Circled] 19		To Western Gateway	Nov 1-15, 1941
		Mar 1-15, 1941	

(Testimony of Gilbert D. Moyle.)

Q. Is the same true, Mr. Moyle, for Board's Exhibit 4 for identification? A. Yes.

Q. A list of your truck drivers as of March 31, 1942? A. Yes.

Trial Examiner Riemer: The objection is overruled, and it may be admitted and marked in evidence as Board's Exhibit 4.

(Whereupon the document heretofore marked as Board's Exhibit 4 for identification, was received in evidence.) [80]

BOARD'S EXHIBIT No. 4

IDAHO REFINING COMPANY

TRUCK DRIVERS

March 31, 1942

Name	Date Employed	Last Day of Employment
Charles Cunningham	11-14-41	
Lester D. Pope	11-15-41	3-12-42 To West- ern Gate
Robert K. Roberts	11-14-41	2-11-42
Robert T. Ferguson	11-17-41	11-23-41
Merlin F. Bowman	11-18-41	
Jack Hollahan	11-17-41	
W. Garrett Leigh	11-17-41	
Harry Messenger	11-17-41	2-26-42
Sam Moss	11-17-41	
Trever Moss	11-17-41	2- 3-42
C. E. McNurlen	11-15-41	
Dayrl J. McMullin	11-15-41	
Stirling Sigman	11-17-41	1-15-42
Delmar T. Swatsenbarg	11-17-41	11-27-41
Lawrence C. Van Voorhis	11-16-41	
Jesse R. Warnick	11-17-41	
Robert Whittig	11-16-41	

(Testimony of Gilbert D. Moyle.)

Name	Date Employed	Last Day of Employment
William Kenneth McPheeley	12- 6-41	12-26-41
W. G. Terry	12- 6-41	2- 4-42
William E. Westergard	12- 1-41	
J. A. Thomsen	12-23-41	
Donald Grandjean	12-23-41	
Phillip W. Meader	12-30-41	2-14-42
Cleone Stewart	2- 4-42	3-27-42
George Comstock	2-26-42	
Clark Baum	3-11-42	
Alden Leroy Dehlin	3-28-42	
Ivan Raymond Cozad	3-16-42	
R. E. Miller	3-11-42	

LEE OWEN

was called as a witness by and on behalf of the Board, and being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (Mr. Penfield) State your name, please?

A. Lee Owen, Stafford Apartments, Pocatello.

Q. Are you employed at the present time, Mr. Owen? [85] A. Yes, sir.

Q. What is your position?

A. I am secretary-treasurer and business agent of the Teamsters Union, Local 983.

Q. Is that the full name of that organization?

A. It is the Teamsters, Chauffeurs, Warehousemen & Helpers' Union, Local 983.

Q. Affiliated with the American Federation of Labor?

(Testimony of Lee Owen.)

A. Correct, and also the International Brotherhood of Teamsters.

Q. That is the organization which filed the amended charge in this proceeding?

A. That is correct.

Q. How long have you held that position?

A. In this particular district, since the 27th day of December, 1941.

Q. Prior to that time, what position did you hold?

A. Prior to that time, for five years, I was president and business agent of the Produce Drivers' Employees' Union, Local 630, Los Angeles, California, and also Secretary of the Western Produce Council.

Q. Are those organizations affiliated with the Teamsters? A. That is correct.

Q. In the fall of 1941, had the Teamsters chartered any labor organizations in the Pocatello and Idaho Falls vicinity? [86]

Mr. Moyle: That was before he was secretary.

Mr. Penfield: Well, he has testified that he was connected with the Teamsters.

A. Could I hear the question again?

(Last question was thereupon read aloud by the reporter as hereinabove recorded.)

A. Yes. There were two locals in this area. The one at Idaho Falls was Local 852 and the one at Pocatello was Local 440.

Q. Do you know the full name of these organizations?

(Testimony of Lee Owen.)

A. Both of them are Teamsters, Chauffeurs, Warehousemen & Helpers Union Local, as I said, 852 and 440.

Q. When did you first come to Pocatello?

A. December 27, 1941.

Q. What were the circumstances that led to your coming to Pocatello?

Mr. Moyle: I object to that as immaterial.

Trial Examiner Riemer: Unless you can tie it up,——

Mr. Penfield: All right, I will rephrase the question.

Trial Examiner Riemer: ——the objection is sustained.

Q. (Mr. Penfield, continuing) Was there anything in connection with your employment by the Teamsters that led you to come to Pocatello?

Mr. Moyle: We object to that on the same grounds.

Trial Examiner Riemer: Sustained. [87]

Q. (Mr. Penfield, continuing) Were you directed to come to Pocatello by the Teamsters?

A. Yes, sir.

Q. Who directed you to come?

A. The International Representative in Los Angeles.

Mr. Moyle: Just a minute, please—I would like to have the record show that I have no opportunity to object. I don't know that it is important, but I think that the Examiner has ruled——

(Testimony of Lee Owen.)

Trial Examiner Riemer: Yes, I don't quite understand what you are driving at, Mr. Penfield.

Mr. Penfield: He has testified that he is connected with the Teamsters.

Trial Examiner Riemer: And he came here like thousands of organizers do all over the country.

Mr. Penfield: Well, no, I think that there are circumstances, and I think the testimony will show that the reason he was directed to come here has a material bearing on this.

Trial Examiner Riemer: Well, if you can show that it is pertinent and material, I think that it ought to be in the record.

Mr. Penfield: I think if he testifies as to the instructions that he received, it is material.

Mr. Moyle: It is hearsay.

Trial Examiner Riemer: Let me hear you make an offer on this, [88] Mr. Penfield.

Mr. Moyle: Off the record?

Trial Examiner Riemer: No, you can make it on the record.

Mr. Penfield: It is alleged in the complaint that the present organization which filed the amended charge is the successor of another labor organization that was in the Pocatello District, and I want to show through this witness that he came to Pocatello instructed to pick up the charter of this and the Idaho Falls Local and install the new charter; that he came to this area with those specific instructions on behalf of the Teamsters, and I think that is material in showing the successorship.

(Testimony of Lee Owen.)

Mr. Moyle: We object to it on the grounds that it is irrelevant, incompetent and hearsay.

Trial Examiner Riemer: Well, let's see, the pleadings put in issue the successorship of Local No. 440. The respondent says that he has no information or knowledge concerning it, and furthermore, that you have no knowledge that Local 440 is a labor organization. You admit that the Association is a labor organization, and I will entertain the offer. Go ahead, the objection is overruled.

Mr. Penfield: What was the last testimony?

(Last question and answer were thereupon read aloud by the reporter as hereinabove recorded.)

Q. (Mr. Penfield, continuing) Did you have any instructions [89] with respect to Local 440?

A. Yes.

Q. What were those instructions?

Mr. Moyle: I take it that our objection goes to all of this?

Trial Examiner Riemer: Yes. You may have a standing objection to the entire line.

A. I was approached by Inor Mohn, who was international representative at Los Angeles, and asked that I should come to Salt Lake and meet Dexter L. Lewis, who was international representative in Utah and Idaho, and follow instructions which would be given me there.

I arrived in Salt Lake somewhere around the 8th of December, and after spending some time under

(Testimony of Lee Owen.)

International orders through the Middlewestern States, proceeded into Pocatello and I arrived here the 27th of December, 1941.

Dexter L. Lewis had authority from our International President, Daniel J. Tobin to pick up both charters, the one at Idaho Falls and the one at Pocatello, and a new charter would be granted immediately covering both areas.

This new charter was installed on January 16 in both areas, at a meeting prior to that time, which I think was around the 28th of December, 1941. The executive boards of both locals of the Idaho Falls and Pocatello——

Mr. Moyle: This, of course, would not be the best evidence of a vote. [90]

Trial Examiner Riemer: That is correct. Proceed.

A. ——voted to accept the International ruling.

Mr. Moyle: May the record show that we object on the ground that it is not the best evidence and hearsay and incompetent.

Trial Examiner Riemer: Let the record so show.

A. (Witness continuing) ——Since that time, both areas have operated as Local 983. Financial statements have been made to the International Union. We have complied with the by-laws of the International Union since that time. We also have the charter which we are willing to bring up for evidence to prove that statement is correct.

Q. (Mr. Penfield, continuing) Did I understand that you testified, Mr. Owen, that there were

(Testimony of Lee Owen.)

meetings of the membership of both Local 440 and the Idaho Falls Local, at which the members took a vote?

A. That is correct, to comply with the International Ruling.

Q. Did you attend both of those meetings?

A. I did, yes, sir.

Mr. Moyle: I take it, Mr. Examiner, our position could not be prejudiced in any way by anything the Unions may have done after the dates upon which the alleged violations of the Act by the Respondent occurred?

Trial Examiner Riemer: I don't understand your question, Mr. Moyle. [91]

Mr. Moyle: Well, I would like to make a motion to strike the testimony of this witness up to this moment on the grounds that it is incompetent, irrelevant and immaterial, and hearsay, and that with reference to the last two questions and answers, which relate to matters that occurred some months after the violations alleged in the complaint, by no means could the Respondent be prejudiced by what the Union might have done afterwards.

Mr. Penfield: Well, the only purpose of this, the original charge was filed by Local 440 and amended charge was filed by Local 983, and the only purpose of this is to show the successorship.

Trial Examiner Riemer: Is the original charge in evidence?

Mr. Penfield: Yes, it is.

Trial Examiner Riemer: May I see it, please?

(Testimony of Lee Owen.)

Mr. Penfield: Yes.

Trial Examiner Riemer: Off the record.

(Discussion off the record)

Trial Examiner Riemer: On the record.

Mr. Moyles: We further object to testimony from this witness on the ground that there is nothing as shown by the evidence, that is, by any competent evidence, that Local 983 legally or otherwise, inherited any of the rights or privileges of Local No. 440. So far as No. 852 of Idaho Falls is concerned, that seems to be outside the grievances stated [92] in the charge, and we take the position that if there is any grievance here, that rests in Local No. 440, and not in Local 983, and if Local No. 440 has been dissolved and its charter cancelled, and it has ceased to exist, so far as the grievances complained of by that Local, this complaint should be dismissed.

Mr. Penfield: Well, I propose to show by Mr. Owen the exact circumstances. That is just exactly what we are leading up to. As far as the objections with respect to there having been no evidence, the present Local has succeeded the other Local, he has already testified that he came out here for the purpose of picking up those charters and installing the others. I think that if he is permitted to finish the story, as to just exactly what happened, this part will be cleared up.

Trial Examiner Riemer: The objection is overruled.

(Testimony of Lee Owen.)

Mr. Moyle: May the objection contain this further ground, that it now affirmatively appears through testimony of this witness, that the charter of Local 440 was cancelled and picked up and ceased to exist thereafter.

Mr. Penfield: I think that the record shows that.

Q. (Mr. Penfield, continuing) Will you continue, and explain exactly the circumstances under which these charters were picked up.

Mr. Moyle: This is all over our same objection.

Trial Examiner Riemer: Yes, your objection is a standing one. You may have an objection to all adverse rulings. [93]

A. Under International By-laws, the executive board of the Teamsters International has the power at all times to put a Local under receivership that is not functioning according to the by-laws of the Teamsters Union, which transpired in this case. The Local was not functioning under the by-laws, and president Tobin authorized that these charters be picked up, and the local be put under receivership, and I might state that even though Local 440 would be out of existence, all Teamsters' Locals are responsible to the International, and your charges would still be carried on by the International even though other charters had been put in here. It states clearly in the International By-laws, that they are responsible for all locals.

Now, we assumed all obligations of Local 440 and 852 when this new charter was put in here. In

(Testimony of Lee Owen.)

fact, there were bills paid back to 1937 by Local 983.

Q. (Mr. Penfield, continuing) Mr. Owen, you might clarify it,—what was the date upon which the charter in Local 983 was installed?

A. January 16. That is when it was issued, and it was installed, I think, on the following Monday.

Q. What happened to the records and property of Locals 440 and 852?

A. They were turned over to the International Agent. They were turned over to me. They were turned over to the International, with exceptions of a few records that I have turned over to [94] you, and a few that we have on file.

Q. Were these records kept by the International?

A. Yes, they are still in the hands of the International to my knowledge, with the exception as I say, of a few that we turned over to you, in this case, and a few that we have got pertaining to another case.

Q. You testified that Local 983 was installed January 16, I believe?

A. That is correct.

Q. Were any records turned over to Local 983?

A. Prior to that time, yes, we got some of the records right after the meeting, when the membership voted to abide by the International ruling, and the rest of the records were turned over at different times up until the charter was installed.

Q. Who were they turned over to?

A. To me or Dexter Lewis, one of the two.

(Testimony of Lee Owen.)

Q. In what capacity were you acting at that time?

A. Secretary-treasurer and business agent under the International ruling where they have put the Local under receivership.

Q. Local 983 had not been——

A. I was acting corresponding secretary-treasurer and business agent of Local 440 until the charters were changed, and I paid bills under Local 440 up until the new charter was installed.

Q. In what capacity did you act when the new charter was [95] installed?

A. The same thing, secretary-treasurer and business agent.

Q. How did you receive your appointment?

A. By the International Union.

Q. Were the records of Local 440 turned over to you?

A. That is correct. 440 and Local 852.

Q. All the books and records?

A. Correct.

Q. All the money? A. All the money.

Q. What was the purpose of Local 440?

A. The purpose of Local 440 was to organize everybody coming into the Teamsters' jurisdiction in this locality.

Q. What was the Teamsters' jurisdiction?

A. The Teamsters' jurisdiction under 440 was Pocatello and vicinity, and I think it extended as far as Ketchum, Sun Valley, and Twin Falls—in fact, I know that it did.

(Testimony of Lee Owen.)

fact, there were bills paid back to 1937 by Local 983.

Q. (Mr. Penfield, continuing) Mr. Owen, you might clarify it,—what was the date upon which the charter in Local 983 was installed?

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A. They were turned over to the International Agent. They were turned over to me. They were turned over to the International, with exceptions of a few records that I have turned over to [94] you, and a few that we have on file.

Q. Were these records kept by the International?

A. Yes, they are still in the hands of the International to my knowledge, with the exception as I say, of a few that we turned over to you, in this case, and a few that we have got pertaining to another case.

Q. You testified that Local 983 was installed January 16, I believe?

A. That is correct.

Q. Were any records turned over to Local 983?

A. Prior to that time, yes, we got some of the records right after the meeting, when the membership voted to abide by the International ruling, and the rest of the records were turned over at different times up until the charter was installed.

Q. Who were they turned over to?

A. To me or Dexter Lewis, one of the two.

(Testimony of Lee Owen.)

Q. In what capacity were you acting at that time?

A. Secretary-treasurer and business agent under the International ruling where they have put the Local under receivership.

Q. Local 983 had not been——

A. I was acting corresponding secretary-treasurer and business agent of Local 440 until the charters were changed, and I paid bills under Local 440 up until the new charter was installed.

Q. In what capacity did you act when the new charter was [95] installed?

A. The same thing, secretary-treasurer and business agent.

Q. How did you receive your appointment?

A. By the International Union.

Q. Were the records of Local 440 turned over to you?

A. That is correct. 440 and Local 852.

Q. All the books and records?

A. Correct.

Q. All the money? A. All the money.

Q. What was the purpose of Local 440?

A. The purpose of Local 440 was to organize everybody coming into the Teamsters' jurisdiction in this locality.

Q. What was the Teamsters' jurisdiction?

A. The Teamsters' jurisdiction under 440 was Pocatello and vicinity, and I think it extended as far as Ketchum, Sun Valley, and Twin Falls—in fact, I know that it did.

(Testimony of Lee Owen.)

Q. Whom did that organization admit to membership?

A. It admitted all warehousemen, truckdrivers, dairy employees, inside and outside. I think that covers almost everything.

Q. Did it admit to membership employees of oil companies? A. That is correct.

Q. Was that membership limited to the truck drivers working for oil companies? A. No.

[96]

Q. What employees of oil companies did it admit?

A. I think—in fact, I know, on the Pacific Coast, we have refineries that we have organized straight through—everything, even office employees.

Q. I was asking with respect to Local 440.

A. The same thing would apply here.

Q. (Trial Examiner Riemer) As I get your testimony, then, Local 440 would have had jurisdiction over any employees working for the Refinery?

A. With exception of mechanics, electricians—in other words, any International Union that would have a charter in here that would cover workers out there pertaining to their craft, naturally would come under theirs, but I think electricians and machinists would be the only two that have an International Representative in this area.

Q. (Mr. Penfield, continuing) Did the members of Local 440 become members of 983?

A. Yes.

(Testimony of Lee Owen.)

Q. I will show you some documents which purport to be application blanks, and will you state if you know what they are?

A. These are application blanks used by the International Local Unions, and on the bottom of them, there is a receipt which is practically the same as the top here, and these are a part of our records. In fact, all of the members that make application make them on either these, or we have new applica- [97] tion blanks which have come into effect. This reads,

“International Brotherhood of Teamsters,
Chauffeurs, Stablemen and Helpers’”—

In September of 1940, our charter was changed to “International Brotherhood of Teamsters, Chauffers, Warehousemen & Helpers,” and we had orders to use up the old blanks and use the new ones afterwards, and I know that there were a lot of old ones left, and I used some of them up in January of this year. This is from our official records. I know when they made application.

Q. I ask you to look through these. Can you tell me if all of those were part of the official records of Local 440 that were turned over to you?

A. Yes.

Mr. Penfield: I will offer these in evidence as Board’s Exhibit 5.

Mr. Moyle: We object to the offer of Board’s Exhibit 5 on the grounds that there appears on these sheets—blanks—notations of various kinds in hand-

(Testimony of Lee Owen.)

writing other than the handwriting of the applicant, and there appears to be some information that appears to be unintelligible without some further explanation.

Trial Examiner Riemer: May I see it, please?

Mr. Moyle: We would like the record to show that none of the writing has been in anywise identified, and that the offer [98] at this time is incompetent.

Mr. Penfield: I am offering it merely to show that they are part of the official records of Local 440, which were taken by Local 983, and that they do contain the names of certain individuals.

Trial Examiner Riemer: Mr. Penfield, if you offer them as original application cards of those named, I think that they ought to be further identified.

If you offer to show that they are part of the original records which this witness acquired, I don't see the point of the offer.

Mr. Penfield: Well, I think that they show the names of certain individuals on application cards as applying for membership in this particular union, and these were part of the records of the Union which were turned over.

Trial Examiner Riemer: Well, that is undoubtedly your position. You haven't accomplished it yet, and ruling is reserved.

Mr. Penfield: Well, I don't know that I understand your last statement.

Trial Examiner Riemer: Well, ask the witness

(Testimony of Lee Owen.)

by further questions to explain what it is, who these individuals are, and when they were received, and came into the possession of the witness, and so on.

A. In the first place, Brandt was secretary-treasurer, because I relieved him when I came in here, and these applications are [99] made in the applicant's own handwriting. They signed them themselves.

That is the procedure that we follow. Now, I can't identify these that they did it, because I didn't receive these until after they were done, but that is the procedure in the International, that applicants sign their won applications, and I think that the individuals that are brought on the stand can vouch whether that is their signature or whether they had them signed, but the initiation date is put in here, I imagine by Mr. Brandt, as secretary.

Mr. Moyle: We object to what the witness imagines.

Trial Examiner Riemer: Sustained.

Q. (Mr. Penfield, continuing) What are the names on there? Who are those persons named on there?

A. The names that are on here?

Q. Yes. A. Well, I think——

Q. Do you know?

A. Just a minute. I am not going to answer until I look here. With the exceptions of one or two, they are all members of our Local.

Q. At the present time?

(Testimony of Lee Owen.)

A. No, there are some of them that have transferred to other Locals. I can tell you the ones that are members, if you like.

Q. Do you know whether or not any of those individuals [100] ever worked for the Idaho Refining Company?

A. Only as the records show that we have. They haven't worked, I don't think, for the Idaho Refinery since I came in here.

Q. Do you know whether they ever did?

A. Only by our records.

Q. What records?

A. The records that we have, our initiation books, and union dues books.

Q. Have any of these individuals ever become members of Local 983?

A. Yes. James Ayres, S. R. Burkholder was, Guy Campbell, Boyd Cornia still is,—Victor Ellingford—

Q. Is or was?

A. No, became members,—Victor Ellingford still is, I think John Evans, Chris Gregerson, Arthur Heckert, H. H. Hendrickson, Carl Hill, Stanley Merrill, Robert Patterson, and Myron Whitesides,—most of them are still working in our jurisdiction under Local 983.

Q. I will ask you to look through those and tell me if it doesn't appear that each of the individuals named is an employee of the Idaho Refining Company according to that application?

Mr. Moyle: I object to that as incompetent.

(Testimony of Lee Owen.)

Mr. Penfield: Well, I am asking on the basis of this application. [101]

Trial Examiner Riemer: Overruled.

A. On the basis of the application, it appears that they all worked at the Idaho Refinery.

Mr. Moyle: May we have the further objection that if the witness is just reading from the application form, the application form itself is the best evidence.

The Witness: That is correct.

Trial Examiner Riemer: Of course, that is what it states right on there.

Q. (Mr. Penfield, continuing) Well, now, you have testified that those are a type of application card used by the organization?

A. That is correct.

Q. In that type of organization card, is there a place for the name of the company—the company in which the particular person is employed?

A. Yes.

Mr. Moyle: We have that same objection, that the form speaks for itself.

Trial Examiner Riemer: Yes, you may have that objection.

Q. (Mr. Penfield, continuing) In this particular form is the name of the employer written in?

A. Yes.

Q. What name appears?

Mr. Moyle: We object to that as not the best evidence, and [102] simply calling for hearsay.

This witness has stated that he knows nothing ex-

(Testimony of Lee Owen.)

cept what appears on the paper, and the court has reserved its ruling on the admission of the paper,

Mr. Penfield: I was merely trying to identify it a little further, is all.

Mr. Moyle: Yes, but it isn't identifying it by putting in evidence the contents.

Trial Examiner Riemer: The objection is sustained.

Mr. Penfield: As I understand the Trial Examiner's ruling,——

Trial Examiner Riemer: May I see them, please?

Q. (Trial Examiner Riemer) Mr. Owen, do you know what this legend is that appears on the upper right corner of this exhibit?

A. That is the date that they were initiated.

Q. Is that an abbreviation for initiation — "Init"?

A. That is correct.

Q. Whose writing is that, do you know?

A. No, I don't.

Q. Is that a common or accepted practice to write a legend on the application forms?

A. Yes, all our new application forms, there is a space put in for the date of initiation, the date entered, and different things, but on the old cards there wasn't.

Trial Examiner Riemer: The exhibit may be admitted and [103] marked as Board's Exhibit 5.

(Whereupon the documents hereinabove referred to were marked and received in evidence as Board's Exhibit 5.)

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-A

Application Blank

[Cut]

Paid 6.25

Init Oct - 27 - 1941

International Brotherhood of Teamsters,

Chauffeurs, Stablemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

.....19.....

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, I hereby make application for admission to membership.

Signature James Alferts

Address 622 West Wyeth

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 32

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-B

Application Blank

[Cut]

519-07-3969

Init. Oct-27-1941

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

10 - 21 1941

Desiring to become a member of the above Union
of the International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers, I hereby
make application for admission to membership.

Signature S. R. (Pat) Burkholder

Address 352 South 3rd

Occupation Transport Operator

Employed at Idaho Refining Co.

Age 31

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-C

Application Blank

[Cut]

Social Sec. 509-07-6062

Init. Nov. 24 - 1941

International Brotherhood of Teamsters,

Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

9 - 29 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, I hereby make application for admission to membership.

Signature Guy Campbell

Address 220 W Young

Occupation Truck Driver

Employed at Idaho Refining

Age 29

Health OK

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-D

Application Blank

[Cut]

518-18-4368

Init. Nov. 10, 1941

International Brotherhood of Teamsters,

Chauffeurs, Stablemen and Helpers

Initiation Fee, \$12.50

..... Union No.

10 - 1 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, I hereby make application for admission to membership.

Signature Boyd Cornia

Address 756 E. Lander, Pocatello Ida

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 41

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-E

Application Blank

[Cut]

519-07-8065 Social Security

152

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

..... Union No. 440

9 - 29 1941

Desiring to become a member of the above Union
of the International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers, I hereby
make application for admission to membership.

Signature Howard L. Davis

Address 820 North Main

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 29

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-F

Application Blank

[Cut]

Paid 6.25

Init. Nov. 24 - 1941

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

9 - 29 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, I hereby make application for admission to membership.

Signature Wayne Douglas

Address 854 N. Aurther

Occupation Driver

Employed at Pocatello Idaho Ref. Co.

Age 21

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-G

Application Blank

[Cut]

Init. Oct. 27, 1941

International Brotherhood of Teamsters,

Chauffeurs, Stablemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

9-29-41

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, I hereby make application for admission to membership.

Signature Victor Ellingford

Address 645 N. Lincoln, Pocatello

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 33

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-H

Application Blank

[Cut]

543-10-5265

Init. Oct 27 - 1941

\$6.25 Pd. Oct. 9 - '41.

~~By~~:

M. Nokes

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

9 - 29 1941

Desiring to become a member of the above Union
of the International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers, I hereby
make application for admission to membership.

Signature John P. Evans

Address Box 910

Occupation Truck Driver

Employed at Idaho Ref. Co.

Age 38

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-I

Application Blank

[Cut]

518-05-8889

Init. Oct. 27 -1941

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

..... Union No. 440

9-29 1941

Desiring to become a member of the above Union
of the International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers, I hereby
make application for admission to membership.

Signature Leonard Fowler

Address 1334 So. 2nd

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 25

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-J

Application Blank

[Cut]

519-01-6368

Init. Oct. 27, 1941

International Brotherhood of Teamsters,

Chauffeurs, Stablemen and Helpers

Initiation Fee, \$12.50

..... Union No. 440

.....19....

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, I hereby make application for admission to membership.

Signature Chris R. Gregerson

Address R.F.D. #1 N. Pocatello Idaho

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 31

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-K

Application Blank

[Cut]

Init. 11-24-41

International Brotherhood of Teamsters,

Chauffeurs, Stablemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

9 - 29 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, I hereby make application for admission to membership.

Signature A. L. Heckert

Address 355 So. 7th St.

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 32

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-L

Application Blank

[Cut]

S.S. 519-07-3888

Initiation fee Paid.

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

..... Union No. 440

Sept. 30 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, I hereby make application for admission to membership.

Signature H. H. Henriksen

Address 332 Washington

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 28

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-M

Application Blank

[Cut]

519-07-3770

519-07-3770

Init. Oct. 27, 1941

International Brotherhood of Teamsters,

Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

Sept. 29 - 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, I hereby make application for admission to membership.

Signature Carl E. Hill

Address 345 So. Grant

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 29

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-N

Application Blank

[Cut]

Init. Oct. 27 - 1941

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

Oct 2 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, I hereby make application for admission to membership.

Signature A. Stanley Merrill

Address 1342 No. Hays Pocatello

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 28

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-O

Application Blank

[Cut]

Init. Oct. 27 - 1941

International Brotherhood of Teamsters,

Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

Teamsters Union No. 440

519-12-2322

Oct. 2 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, I hereby make application for admission to membership.

Signature R. C. Miller

Address Pocatello, Idaho P.O. 746

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 34

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-P

Application Blank

[Cut]

540-03-0355

Init. Oct 27 - 1941

Social Security

International Brotherhood of Teamsters,

Chauffeurs, Stablemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

9 - 29 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, I hereby make application for admission to membership.

Signature Robert W. Patterson

Address 355 South 7th Pocatello

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 28

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-Q

Application Blank

[Cut]

Init. Oct. 27 - 1941

International Brotherhood of Teamsters,

Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

9-29-41

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, I hereby make application for admission to membership.

Signature John Ray

Address 417 West Bridges

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 23

Health OK

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-R

Application Blank

[Cut]

518-10-8863

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

Oct. 21 1941

Desiring to become a member of the above Union
of the International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers, I hereby
make application for admission to membership.

Signature Leland W. Stanford

Address 623 So. Sixth, Pocatello, Ida.

Occupation Driver

Employed at Idaho Refining Co.

Age 30

Health

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-S

Application Blank

[Cut]

Init. Nov. 10 - 1941

International Brotherhood of Teamsters,

Chauffeurs, Stablemen and Helpers

Initiation Fee, \$12.50

S.S.A. 518-05-6008

.....Union No. 440

Sept. 30 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, I hereby make application for admission to membership.

Signature P. P. Stanger

Address Pocatello Idaho

Occupation Truck Driving

Employed at Idaho Refining Co.

Age 32

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-T

Application Blank

[Cut]

528-05-6303

Init. Oct. 27, 1941

International Brotherhood of Teamsters,

Chauffeurs, Stablemen and Helpers

Initiation Fee, \$12.50

..... Union No. 440

.....19.....

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, I hereby make application for admission to membership.

Signature Myron D. Whitesides

Address 322 West Carson, Pocatello, Idaho

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 31

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

Mr. Moyle: We would like the record to show at this time that we claim at least the right to cross examine, or to have some evidence produced about which we could cross examine about the signatures on each of the applicants on these application blanks on the dates on which the applicants actually signed.

Trial Examiner Riemer: You will have that right before the hearing is over.

Mr. Penfield: I might state that we have some other evidence in connection with the union membership of these employees. I would like to get these in at this time because they are part of the union records, and Mr. Owen has custody of them.

Q. (Mr. Penfield, continuing) After you became business agent and secretary of Local 983, were you ever approached by any employees of the Idaho Refining Company? A. Yes.

Q. What were the circumstances?

A. On numerous occasions, they wanted to know if there wasn't something that we could do to bring this case to a head.

Q. Do you know who some of these employees were?

A. I think that I know practically all of them.

Q. Can you give us the names of some of them?

A. Well, Boyd Cornia, Arthur Heckert and John Evans and [104] Chris Gregerson, Stanley Merrill, Guy Campbell—I think practically all of them that were in this locality when I came here.

Q. What did they say?

(Testimony of Lee Owen.)

A. Well, they wanted to know what they could do to get this settled, for one thing.

Q. What do you mean by "this thing"?

A. Where they got discharged from the Idaho Oil Refinery, they told me that the case had been taken up with the National Labor Relations Board, but nothing had been done about it at that time, so that is when we filed an amended complaint.

Q. Following the time when you became business agent for Local 983, did you ever attempt to contact the company, the Idaho Refining Company?

A. Yes.

Q. What attempts did you make?

A. Oh, around January 3 or 4, I think it was; somewhere around that time, Dexter L. Lewis and myself drove out to the Idaho Oil Refinery on two different occasions, in a row, and were informed that Mr. Moyle and Mr. Copening were down in Salt Lake, and I think the second time, they were in Boise, but the telephone operator got them, and I called and talked with Mr. Moyle over the telephone, which was considerably later, about around the 23d of January, I think it was, and Mr. Moyle stated that he had nothing to talk with me at all, that it was entirely in the hands [105] of Henry Moyle at Salt Lake.

Q. Did you ever have any further contacts with the company?

A. That is the only contacts that I have had.

Q. What is the purpose of Local 983?

A. The purpose of Local 983 is to organize all

(Testimony of Lee Owen.)

workers in Idaho Falls and vicinity—no, Pocatello, Idaho Falls and vicinity, and the State of Idaho and vicinity, that is the way the charter reads that was granted to us by the International.

Q. Is that the same group of workers that Local 440—

A. With the addition of some men, yes.

Q. What additions?

A. The additions are the Cooperative Creamery at Idaho Falls, Shelley and Firth, Midland Elevator Employees at Idaho Falls, and truck drivers at the Gun Plant and Airport here, with some minor additions that I don't recall right now.

Q. Does Local 983 have contracts covering truck drivers of any oil companies?

A. Not in our territory, no,—no contracts. [106]

Cross Examination

Q. John Ray?

A. John Ray is,—I don't think that he has ever been a member of Local 983.

Q. Leland W. Stanford?

A. I don't know him, either.

Q. He hasn't belonged to your Local?

A. As far as I know, he don't, no.

Q. You don't know anything about him, and P. P. Stanger?

A. I don't recall him, either.

Q. As far as you know, he hasn't joined your 983? A. As far as I know, he hasn't, no.

[122]

Mr. Penfield: I would like to call Mr. Anderson.

JOHN ANDERSON

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your name, please.

The Witness: John Anderson.

Trial Examiner Riemer: Where do you live?

The Witness: 1504 South Fourth, Pocatello.

Direct Examination

Q. (Mr. Penfield) Where are you employed?

A. Idaho Refining Company.

Q. In what capacity?

A. Helper on the cracking unit.

Q. Describe just what your duties are on that job, if you will, please.

A. Well, it is control of fires, pressures and temperatures and levels, and just routine check-up in the plant every few minutes.

Q. Do you have a series of gauges to watch and wheels to turn?

A. Pressure gauges and valves and temperatures.

Q. When did you first come to work for the company?

A. Well, I first came up here for the Alcol Combustion Company. That was in April, 1938, and I worked there until about the middle of July, 1938.

[138]

Q. When you first came up, you were not on the payroll of the Idaho Refining Company?

(Testimony of John Anderson.)

A. No, it was the Alcol Combustion Company that had the contract to build the plant.

Q. When did you first go on the payroll of the Idaho Refining Company?

A. In August, 1938.

Q. Did you commence work on the same job on which you are now working? A. No.

Q. What job did you have?

A. I started work on maintenance—pipe fitting.

Q. What do you mean by pipe fitting?

A. Well, any time the line blows out, they have to have a new line, or an additional line or something.

Q. How long did you work in that capacity?

A. I worked there about three months.

Q. Then what job did you get?

A. I went on the treating plant—that is, treating gasoline.

Q. Is that the same job that you have at the present time?

A. No, that is treating gasoline.

Q. What do you mean by that?

A. We treat it with chemicals — caustics, and sweeten it up before it goes to storage.

Q. How long did you work at that job?

[139-140]

A. I worked there about a year.

Q. Then what job did you take?

A. Then I went on the cracking unit, the job that I am on now.

(Testimony of John Anderson.)

Q. You have been working on that job ever since? A. Yes.

Q. Are you a member of the Idaho Refining Company Employees' Benefit & Labor Association.

A. Yes.

Q. When did you become a member?

A. Well, whenever it started, I think in the fall of 1938 at started.

Q. What was your first knowledge of an attempt to form an employees' association?

A. Well, the employees just got it up among the employees in the plant, and they formed the Association.

Q. Do you recall just when that was?

A. Well, it was a short time before we had the first meeting.

Q. Do you recall any particular person who was particularly active?

A. Well, George Mann and George Hibbler.

Q. Who is George Mann?

A. He was chief chemist at that time.

Q. George Mann? A. George Hibbler.

[141]

Q. Who was George Mann?

A. He was a helper on the cracking unit.

Q. Do you know an employee by the name of Gaudet?

A. Val Gaudet, he was superintendent at that time.

Q. Was he active in the discussion concerning the formation—— A. No.

(Testimony of John Anderson.)

Q. ———of the organization? A. No.

Q. Do you recall attending a meeting at which the formation of the Employees' Association was discussed? A. Yes.

Q. When was that meeting held?

A. Well, I don't remember the month—it was in the fall of 1938, at the refinery.

Q. How did you receive notice of it?

A. Well, they just passed it around the plant and put it on the bulletin board that meeting,—for a discussion of it.

Q. Did you see any notice on the bulletin board?

A. Well, I don't recall whether it was, or just passed around the plant.

Q. Do you recall from whom you heard of it?

A. No.

Q. What time was that meeting held?

A. I imagine around eight o'clock in the evening, seven or eight o'clock.

Q. Where was it held? [142]

A. In the refining office.

Q. About how many persons were there?

A. Well, probably everyone that was employed by the refinery except those on shift who could not get off.

Q. Do you recall about how many persons?

A. Well, I would say there were 40 or 50.

Q. Did that include employees in the office?

A. Oh, I think some of the employees in the office were there.

(Testimony of John Anderson.)

Trial Examiner Riemer: I am sorry, I lose part of your answer when your voice falls.

Will you read the answer?

(Last answer was thereupon read aloud by the reporter as hereinabove recorded.)

Trial Examiner Riemer: Try to keep your voice up.

Q. (Mr. Penfield, continuing): Who presided at this meeting?

A. I think George Mann presided.

Q. Was it George Mann or George Hibbler?

A. Well, it was one of the two.

Q. Are they both named George?

A. George Mann and George Hibbler.

Q. What was said by you at this meeting?

A. Well, they—we all discussed the benefits of having an Association among the fellows.

Q. Did the person presiding discuss it? [143]

A. Well, George Hibbler had been in one refinery where they had it before, and he told us about the advantages it offered them.

Q. What did he say the advantages were?

A. Well, I think our first dues were a dollar a month until we had built up a cash reserve, and it offered so much a week if we were sick, and if we were hurt on the job or something, we got the benefits, and then we had a social and welfare fund in there.

Q. What was the purpose of the social and welfare funds?

(Testimony of John Anderson.)

A. Well, if any member of the Association's mother or father or immediate member of his family died, the Association sent flowers, or something like that.

Q. Did he show any documents that purported to set forth the constitution or by-laws for an organization?

A. Well, at that time, he didn't.

Q. Was he reading from any—

A. No, I think it was just an oral statement.

Q. Did he tell you that they were seeking to set up such an organization as they had at the other company—

A. Among the fellows in the refinery.

Q. Did he say who were to be members of the Association?

A. Well, any member on the payroll of the Idaho Refining Company.

Q. Did that include foremen and supervisors?

[144]

A. I expect that it could have.

Q. Well, did it?

A. Well, I know a lot of them belonged to it. In fact, I would say practically all of them belonged.

Q. Were any supervisors or foremen at the meeting?

A. Well, George Hibbler, I know that he belonged, and he and Edward V. Smith, who is superintendent now.

Q. Were they at the meeting?

(Testimony of John Anderson.)

A. Yes, but Smith wasn't superintendent at that time, he was an operator.

Q. Was Kermit Rise at the meeting?

A. I think so.

Q. Was Mr. Copening at the meeting?

A. I don't think that Mr. Copening was with the company at that time.

Trial Examiner Riemer: Who is Mr. Rice?

The Witness: Well, he has charge of the trucks some way.

Trial Examiner Riemer: I see.

Q. (Mr. Penfield, continuing): Did he have at that time? A. I think so.

Q. Were any other officials or bosses there?

A. Well, I think practically everyone from the refinery was there.

Q. Does that include officials and bosses?

A. I think so. [145]

Q. Was there any balloting at this meeting?

A. Yes.

Q. What was voted on?

A. We voted whether we wanted to be in it, or whether we didn't.

Q. What was the result of the vote?

A. It carried 100 per cent. for it.

Q. Did all of the persons present at the meeting participate in the vote? A. Yes.

Q. Were any by-laws adopted at this meeting?

A. We were going to draw it up. We hadn't had time to make them yet.

(Testimony of John Anderson.)

Q. Were you present at the later meeting where the by-laws were adopted? A. Yes.

Q. When were the officers elected?

A. After the first meeting, after we voted on the Association.

Q. Before the by-laws were drawn up?

A. Well, I think at that time we had by-laws, or were drawing them up.

Trial Examiner Riemer: I want to get this straight. This was a meeting held in the fall of 1938, at which Mr. Hibbler told of the benefits of an inside union?

The Witness: It wasn't a union at all. It was just an [146] Association.

Trial Examiner Riemer: All right, we will just call it an Association, and was it at this first meeting that you attended that those officers were elected?

The Witness: No. We voted on the Association at first, whether we wanted it or not—the fellows in the refinery.

Trial Examiner Riemer: And the vote was to have an Association?

The Witness: It carried 100 per cent.

Trial Examiner Riemer: And officers were elected at a later meeting?

The Witness: Yes, sir.

Q. (Mr. Penfield, continuing): Did Mr. Hibbler say anything with respect to the Association bargaining for the workers? A. No.

Q. With respect to wages and hours?

(Testimony of John Anderson.)

A. No.

Q. Was the name of the organization selected?

A. It was the Idaho Benefit Association——

Q. Was that the full name, Idaho Benefit Association? A. That was the full name.

Trial Examiner Riemer: Will you fix the time of these various incidents?

Mr. Penfield: I was speaking of this first meeting.

Trial Examiner Riemer: That is what I wanted to know. [147]

Q. (Mr. Penfield, continuing): Was that at the first meeting when the name was selected?

A. Yes.

Q. Was there anything in the title that said "Labor Association"? A. No.

Q. Was the name later changed?

A. I think so.

Q. Do you recall when that name was changed?

A. No, it was two years or more ago.

Q. Did you attend the meeting at which the name was changed? A. Yes.

Q. Who moved to make the change?

A. Well, I don't know whose idea it was,—I can't recall what was brought up about it—why we changed it.

Q. Do you have any recollection as to why it was changed?

A. No, I don't, because we never used it for a bargaining agency at all with the company.

(Testimony of John Anderson.)

Q. Do you recall who moved to change the name at this meeting?

A. Yes, I recall it was moved, and we voted on it.

Q. Who made the motion?

A. I don't know who made the motion. It is several years ago.

Q. It is your testimony this was about two years after——

A. Just about. [148]

Q. ——the first meeting?

A. I think that the name has been changed just about two years.

Q. Have you been a member of this organization ever since that first meeting?

A. Ever since the first meeting.

Q. Have you attended the meetings regularly?

A. Well, for a while we went to them regularly, but the attendance kind of dropped off, so we just held one about every two or three months.

Q. Where were they held?

A. We always held them in the refinery office, so we built a new bath house, and after that, we held them in the change room,—a regular meeting room there.

Q. Was that change room on the company property?

A. Yes.

Q. Have you ever held any office in the association?

A. I was on the grievance committee once.

Q. What was the purpose of the grievance committee?

(Testimony of John Anderson.)

A. Well, if something needed doing around the plant, and the supervisors didn't take care of it properly, we would go and see Mr. Moyle and see if he would do something about it.

Q. What sort of things?

A. Oh, some hazards or dangerous things around the plant that should be fixed.

Q. Just matters of safety? [149]

A. Personal safety for the workers.

Q. Did you ever take up any grievances of individual workers? A. No.

Q. Did you ever take up any grievances concerning wages and hours? A. No.

Q. How long were you a member of the grievance committee? A. Six months.

Q. What time was that?

A. Well, about a year after it started.

Q. That would be in 1939? A. 1939.

Q. In the spring of 1941, do you recall any dissatisfaction among the employees concerning the wage scale?

A. Well, I know we discussed wages, and decided to try and get more money.

Q. By "we", what employees?

A. Well, just a group of the fellows.

Q. Where were they employed?

A. The Idaho Refining Company.

Q. In what connection?

A. Well, in all branches,—the boiler house, the cracking unit, the treating plant, loading dock.

Q. What about the truck drivers?

(Testimony of John Anderson.)

A. We didn't bother with them, because we didn't know anything [150] about driving a truck or anything like that.

Q. You said there was a discussion among the other employees during the spring of 1941?

A. Yes, sir.

Q. Was that a discussion at a meeting of the Association? A. No.

Q. Were any committees formed at that time?

A. Yes, sir.

Q. Was this a committee of the Association?

A. No, sir.

Q. Who proposed the committee?

A. Well, Del Peters and Max Pope and K. Mills and myself.

Q. In what capacity were these persons you have just named employed?

A. Well, Max Pope was in the boiler house, Del Peters was in the treating plant, K. Mills, he was an operator.

Q. What was the purpose of this committee?

A. To go and talk to Mr. Moyle and try to get a raise,—more money.

Q. Did the committee prepare a wage scale?

A. Yes.

Q. Did you meet with Mr. Moyle?

A. Yes, sir.

Q. Do you recall when the meeting was held?

A. It was sometime in May of 1941. [151]

Q. Did you present him with this new wage scale? A. Yes, sir.

(Testimony of John Anderson.)

Q. Were the wages of truck drivers and mechanics included in the schedule that you presented? A. They were not.

Q. Were the wages of the office force included?

A. No, sir.

Q. What did Mr. Moyle tell you?

A. Well, he said it was satisfactory to him, and he would go down and talk to Mr. Henry D. Moyle about it, that he could not authorize an increase until he went to Salt Lake.

Q. Did you have a later meeting with Mr. Moyle?

A. Yes, sir; he called a meeting.

Q. He called a meeting?

A. He wanted to discuss the wage problem with us.

Q. Was that a meeting of this same committee?

A. No, that was with everyone concerned on the wage raise.

Q. How were you notified of this meeting?

A. I think that he put it on the bulletin board that he would talk to us in the refinery office at a certain time.

Q. How much later than the first meeting with Mr. Moyle was this?

A. I would say ten days to two weeks.

Q. Did you attend this meeting?

A. Yes, sir. [152]

Q. Were any of the truck drivers or mechanics present?

A. Well, the best I recall, several truck drivers came in and Mr. Moyle said that he would have

(Testimony of John Anderson.)

a meeting with them a few days later and take up their problem with them.

Q. What did Mr. Moyle tell you at this meeting?

A. Well, he told us how much raise we were going to get.

Q. Was it the amount that you had set forth in your wage schedule?

A. Not quite, no, sir.

Q. Was it less? A. A little bit less.

Q. Was there anything,—was there any discussion,— A. No, sir.

Q. —of the wage schedule presented?

A. No, sir.

Q. Was this schedule to apply only to the—

A. To the refinery proper, and did not include the drivers or the office force.

Q. Was any balloting conducted at this meeting?

A. Well, yes, sir; we voted whether—Mr. Moyle wanted us to sign an agreement not to ask for an increase in wages for one year. That was for the whole group,—any single person could come in and talk to him and speak for himself and try to get more money, but not as a whole group, and the motion carried not to ask for any more money for one year. [153]

Q. (Trial Examiner Riemer): For another year?

A. For one year, yes, sir.

Q. (Mr. Penfield, continuing): Was it understood that this agreement was to be put in writing?

(Testimony of John Anderson.)

A. Well, it may have been. I didn't sign anything.

Q. Well, I mean, were you told that this agreement was to be put in writing?

A. I think that he wanted a written agreement. It would be about the only thing that would be binding.

Q. Who were to sign that agreement?

A. I think the president of the Association, because after all, we were all members of the Association.

Q. But the agreement was to be limited to employees of the refinery proper? A. Yes.

Q. Did you ever have anything to do with the preparation and signing of this agreement?

A. No, sir.

Trial Examiner Riemer: That raises a number of questions, but go ahead.

Mr. Penfield: Some of them might be cleared up later.

Q. (Mr. Penfield, continuing): Do you know if the truck drivers and truck mechanics got any increase?

A. I think Mr. Moyle met with them in a few days, and I believe that they got a raise. [154]

Q. Did you attend that meeting?

A. No, that was the truck drivers and mechanics and grease monkeys.

Q. Does your work throw you in contact with the truck drivers? A. Very little.

Q. Does the work of other refinery proper employees throw them in contact with truck drivers?

(Testimony of John Anderson.)

A. Well, with exception of the loading dock, not very often.

Q. How did it happen that on this committee that was formed to get wage increases, the truck drivers and mechanics were not considered?

A. Well, in the refinery, we have always worked under a superintendent, and he was the superintendent of the loading dock and the treating plant and the cracking units and all the yardmen.

Q. He had no jurisdiction at all over the truck drivers and we worked our agreement and wage schedule through Mr. Miller, who was superintendent at that time and we had no dealings with the truck drivers. He had no jurisdiction over the truck drivers.

Q. Do you know Mr. August Rosqvist?

A. I don't know him personally. I have heard of him through the papers.

Q. Have you ever seen him?

A. I saw him at one time.

Q. Did he ever attend meetings of the Association at which you [155] were present?

A. He spoke to us in the refinery offices one night.

Q. Was this a regular Association meeting?

A. I think that he contacted the officials of the company and they invited him to come out and speak to us.

Q. When was this meeting held?

A. Well, I think that was in the spring, about 1939.

(Testimony of John Anderson.)

Q. Do you know who Mr. Rosqvist was?

A. Yes, after he was introduced to us, we did.

Q. Who was he?

A. Well, he had something to do with the Labor Temple here—the A F L.

Q. Who presided at this meeting?

A. Well, I believe it was George Mann. I believe that he was president of the Association at that time.

Q. Who spoke at the meeting?

A. Well, Mr. Rosqvist spoke, and some other Union representative with him spoke.

Q. What was the substance of Mr. Rosqvist's remarks?

A. He was trying to get us to join the Union.

Q. Were there any questions asked?

A. Yes, we asked what advantages we would have in joining the Union.

Q. Did anyone else speak besides Mr. Rosqvist?

A. I think Mr. Webb spoke. [156]

Q. Who was Mr. Webb?

A. He was treasurer of the company at that time.

Q. (Trial Examiner Riemer): Is that Arch Webb?

Q. (Mr. Penfield, continuing): Arch Webb, is that correct? A. Yes.

Well, he told us that he wouldn't advise us to join the union, or not to join it. He just left it up to us, whether we wanted the union or whether we didn't.

(Testimony of John Anderson.)

Trial Examiner Riemer: Will you read the witness' answer, Mr. Reporter?

(Thereupon the answer referred to was read aloud by the reporter as hereinabove recorded.)

Trial Examiner Riemer: Off the record.

(Discussion off the record.)

Trial Examiner Riemer: On the record. The hearing will recess at this time until tomorrow morning, Tuesday morning, at 9:30. Mr. Anderson, will you return here tomorrow morning at 9:30?

The Witness: Yes.

(Whereupon, at 4:30 p. m. August 3, 1942, the hearing was adjourned to 9:30 a. m. August 4, 1942, at the same place.) [157]

District Court Room
Post Office Building,
Pocatello, Idaho,
Tuesday, August 4, 1942

The above-entitled matter resumed for hearing at 9:30 a. m. pursuant to adjournment, as follows: [158]

PROCEEDINGS

Trial Examiner Riemer: The hearing will be in order. Mr. Anderson, will you please come up here?

JOHN ANDERSON

the witness on the stand at the time of adjournment, resumed and further testified as follows:

Direct Examination (continued)

(Last question and answer from preceding session were read aloud by the reporter as hereinbefore recorded.)

Q. (Mr. Penfield, continuing): What else did Mr. Webb say?

A. Well, he said that he didn't think that a Union would do anything for us that the company wouldn't do.

Q. Was there any balloting at this meeting?

A. Yes.

Q. Who suggested it?

A. Well, I don't know; we just voted to see whether we wanted to join the Union or not. I forget who suggested it.

Q. You don't recall who suggested it?

A. No, I don't.

Q. Was Mr. Rosqvist present during the balloting? A. I don't think so.

Q. Was Mr. Webb? A. No.

Q. Do you recall the exact results of this vote?

A. I think there were two votes for the Union, and the rest [162] against.

Trial Examiner Riemer: How many would that be against?

The Witness: Well, I imagine that it would be 35 or 40 against to 2 for.

(Testimony of John Anderson.)

Q. (Mr. Penfield, continuing): Do you know the exact date of this meeting?

A. No, I don't. I think that it was in the spring of 1939, is as near as I can recall it.

Q. What month?

A. I wouldn't answer.

Q. To the best of your recollection?

A. Well, I would say March.

Q. Do you recall any discussion in regard to forming a labor organization at a subsequent date?

A. You mean change the name of our Association to a labor association?

Q. No, I have in mind an outside labor organization. A. No.

Q. In the fall of 1941, did you hear that the truck drivers were organizing?

A. Yes, I heard that they were organizing.

Q. Who told you?

A. Well, just through the plant, I think that practically everyone in the refinery knew it.

Q. Was it commonly discussed among the employees? [163]

A. Yes, we talked about it on the shift out there, about drivers joining.

Q. How much before November 14 did this occur?

A. Well, I suppose we knew it a month ahead of that.

Q. You testified yesterday about a meeting at which the question of forming an organization of the employees was first discussed—

(Testimony of John Anderson.)

A. Yes.

Q. What was the date of that meeting?

A. Well, it was in the fall or early winter of 1938.

Q. To the best that you can recall, in what month?

A. Well, I would say about November.

Q. When had the plant commenced operation?

A. We just started up out there in June of 1938.

Q. And this first meeting you believe was in November?

A. October—I don't remember. It was in the fall or early winter of 1938.

Q. You testified that there was a later meeting at which by-laws were adopted and officers elected, is that correct? A. Right.

Q. Do you recall when this meeting occurred in relation to the first meeting?

A. Well, I would say about a month later.

Q. About a month later. That is all.

Trial Examiner Riemer: Mr. Moyle? [164]

Cross Examination

Q. (Mr. Moyle): You talk about the drivers organizing, and you said that you heard about it a month before November 14? A. Yes, sir.

Q. You didn't tell any officer of the company that you knew anything about it?

A. No, sir.

Q. And you didn't hear the matter discussed with any officer? A. No, sir.

(Testimony of John Anderson.)

Q. And so far as you know, no officer of the company knew anything about it?

A. That's right.

Q. The discussions that you testified to were those that you had with the employees there?

A. With the employees on shift out there, throughout the plant, that the drivers were joining.

Q. Did you know which of the drivers had joined or had not joined?

A. Well, I talked with various drivers over in the change room, or something like that, who would tell me that they had joined.

Q. These drivers met with you in the change room every day?

A. Well, not every day. I might go a week without seeing them.

Q. You mean that there might not be one in the change room when you changed? [165]

A. No, sir. I might go for a drink of water, and a driver there would come in.

Q. When the drivers are in, they make the change room their headquarters?

A. No, they will come over while their truck is being loaded.

Q. Yes, they make that their lounging and recreational headquarters?

A. While their truck is being loaded or unloaded.

Q. Yes, and that is the same with the other workmen in the plant?

A. Yes.

(Testimony of John Anderson.)

Trial Examiner Riemer: Will you take your hand away from your mouth, please, and we can hear you better. Thank you.

Q. (Mr. Moyle, continuing: Now, the truck drivers helped to build this recreation center?

A. Yes, some of them worked on it.

Q. That is where you hold your meetings?

A. Yes, sir.

Q. You recall do you not the fact that the employees wanted a new change room?

A. Yes, sir.

Q. And they made that fact known to the company? A. Yes, sir.

Q. And suggested to the company that if the company would furnish the materials, the workmen would build the building? [166]

A. Yes, sir.

Q. And the company furnished the materials?

A. Yes, sir.

Q. And the workmen in the refinery, including the truck drivers, helped to build it?

A. Yes, sir.

Q. And that work was done outside of company time? A. Yes, sir.

Q. Off shift? A. Yes, sir.

Q. And that arrangements was carried out with the company by the officers of the corporation?

A. Yes, sir.

Q. Do you remember just when the original negotiations were undertaken to build this meeting hall and change room?

(Testimony of John Anderson.)

A. No, sir, I don't. I imagine—well, it was a year and a half or so after we started up.

Q. That would be somewhere in the early summer of 1939?

A. 1939, yes, sir; I think so.

Q. Or was it in the wintertime?

A. Well, we started in the fall and didn't get it completed until last spring.

Q. That would be the fall of 1939 and you finished it in the spring of 1940?

A. 1940, yes, sir.

Q. And since that was finished, that is where you held your [167] meetings? A. Yes.

Q. And the idea with reference to the building of this building originated with the Employees Association there at the Refinery? A. Yes, sir.

Q. This building consists of a fairly large meeting room, how large would you say that room is?

A. Well, I would say it is about 24x16, or something like that.

Q. Is it large enough to accommodate the employees in their employees' meetings?

A. Yes, sir; that is the one room.

Q. And then in addition to that, there is a locker room? A. Yes.

Q. And shower baths? A. Yes, sir.

Q. And then a room near the front door for the sale of merchandise? A. Yes, sir.

Q. Now, since the construction of this building, the employees have had the exclusive use of it?

A. Yes, sir.

(Testimony of John Anderson.)

Q. At the time that Mr. Webb was present at your meeting in the spring of 1939, you think in the month of March, at which he introduced Mr. Rosqvist, Mr. Webb left immediately after he had introduced Mr. Rosqvist,—Mr. Webb left immediately, [168] did he not?

A. I believe he left. I believe Mr. Rosqvist had the floor to himself without Mr. Webb.

Q. Without Mr. Webb. In other words, Mr. Webb introduced him, and then left the meeting, and Mr. Rosqvist from then on had the floor?

A. I think so.

Q. And Mr. Webb told you that the meeting had been called at the request of Mr. Rosqvist?

A. Well, I have been under the impression that the company officials gave Mr. Rosqvist permission to come and speak to us.

Q. That is, he had asked for that permission?

A. I think so.

Q. And he had also asked that a vote at that time be taken? A. Yes, sir.

Q. And when Mr. Rosqvist spoke to you and before he left, before you took the vote, it was suggested by him that there should be a vote taken?

A. Yes, sir.

Q. As to whether you joined the union Mr. Rosqvist represented or whether you made some other arrangement? A. Yes, sir.

Trial Examiner Riemer: You say "him", is that Rosqvist or Webb?

(Testimony of John Anderson.)

Mr. Moyle: I am speaking now of Mr. Rosqvist? [169] That is after Mr. Webb left.

Q. (Mr. Moyle, continuing): Is that not correct? A. Yes.

Trial Examiner Riemer: Then it was Rosqvist who suggested the vote?

Mr. Moyle: Yes, that is correct, isn't it?

A. (Continuing): Well, I don't know whether Rosqvist suggested the vote or not, but it was suggested at the meeting that we vote.

Q. (Mr. Moyle, continuing): That is after Mr. Rosqvist had the floor and Mr. Webb had left?

A. Yes, sir.

Q. There may have been as many as 60 at that meeting—you said 35 or 40—you didn't count them?

A. No, sir; I didn't.

Q. There may have been more than 40?

A. Well, it is doubtful, because they had a number of men on shift.

Q. You think that 40 would be the outside number?

A. I think that 40 would have covered it.

Q. Now, at that time, George Mann was president of this Association? A. Yes, sir.

Q. And he is not now with the refinery?

A. No, sir. [170]

Q. He left the employment of the refinery shortly after that, did he not? A. Yes, sir.

Q. Now, do you know Mr. Henninger?

A. Yes, sir.

(Testimony of John Anderson.)

Q. He has been an employee of the refinery pretty much for the same tenure as you?

A. Yes.

Q. Did he come there at the same time, or after?

A. Well, just about the same time.

Q. And he has worked at various jobs around the refinery?

A. Yes, sir.

Q. He has served in the treater room?

A. Yes.

Q. Then he has worked at other jobs around the unit?

A. No, sir; he has never been on the unit.

Q. Well, I mean on the yard. I don't speak of the unit technically as you would, but he has had different jobs as supervisor of the refinery proper?

A. To the best of my knowledge he has been on the treating plant and loading dock, and that is all.

Q. And has been under the supervision of the refinery superintendent?

A. Yes, sir.

Q. Now, you testified yesterday concerning a committee that [171] was formed consisting of Del Peters, Max Pope, K. Mills and yourself?

A. Yes, sir.

Q. You said that was in the spring of 1941, as nearly as you remember it, in the month of May?

A. Yes, sir.

Q. You didn't know what day in the month that was?

A. No, sir; I wouldn't know.

Q. The purpose of this committee was to get a wage increase?

A. That is right.

(Testimony of John Anderson.)

Q. And at that time, Del Peters was president of the company Association, or the inside Association?
A. That's right.

Q. Was Max Pope, or Kay Mills, either one of them, an officer of the Association at that time?

A. I don't believe so.

Q. And you were on the grievance committee?

A. Not at that time, no, sir.

Q. But you had been?

A. I had been.

Q. Your committee saw Mr. Moyle?

A. Yes, sir.

Q. And as the result of that, there was a general meeting of the employees that was held?

A. Yes, sir. [172]

Q. But in the general meeting, there was an agreement presented was there not?

A. Yes, sir. [174]

Q. And that was signed by Delmar R. Peters, the President?

A. I knew Del signed the agreement.

Q. And attested by Earl B. Porter, the secretary?
A. He was secretary.

Q. Did you vote for both of these gentlemen as officers of the Association?

A. I think so.

Q. They were duly elected as such at a meeting called for that purpose?
A. Yes.

Q. And that the agreement was then executed as prepared by your Association's attorney and

(Testimony of John Anderson.)

signed by Gilbert Sheets, President, and F. L. Copening, Jr., Secretary?

A. I knew that they presented an agreement and it was signed by the President and Secretary.

Q. And you understood that that agreement had to do with the wages of the employees? [175]

A. For one year, yes, sir.

Q. And that year was from June 1, 1941 to May 31, 1942? A. 1942. [176]

Q. Do you recall on March 8, 1941, a petition was circulated among the employees by the Association empowering the Board of Directors of your organization to call a special meeting for the purpose of making provisions in the by-laws and constitution for athletic funds to be supported by a third of the profits on the sale of the commodities you sold?

A. Well, I know a certain percentage of our profits used to go to that athletic fund. I think that it has been discontinued.

Q. Do you remember the petition?

A. Yes, sir.

Q. Did you sign it?

A. Yes, sir; I signed a "no" to it.

Q. And did anybody else sign "No" to it?

A. I think so. We had quite an argument down there about [179] contributing to the athletic fund. The biggest part of us didn't want to. I think that it was left to the petition to see whether or not we would give to the athletic fund, and I don't believe that we gave to it.

(Testimony of John Anderson.)

Q. Well, you were not present at the meeting in which the decision was finally made?

A. No, sir.

Q. By the Association? A. No, sir.

Q. Didn't you know after that meeting was held, that at that meeting there were three committees appointed, a grievance committee, a welfare committee, and a safety committee?

A. Yes, sir; a matter of every six months we hold those officers' meetings.

Q. You had those three committees?

A. Yes.

Q. They were standing committees in your organization? A. Yes, sir.

Q. And at that time, these committees were just perpetuated that had already been in existence?

A. Yes, sir.

Q. As a matter of fact, pretty much from the beginning of your organization up to the present time, you have had these three standing committees? [180]

A. Yes, sir.

Q. A welfare committee, as safety committee, and a grievance committee? A. That's right.

Q. And on that grievance committee, at a meeting of 1940——

Trial Examiner Riemer: What is the date of that meeting?

Mr. Moyle: The meeting of August 30, 1940.

Q. (Mr. Moyle, continuing): August 30, 1940, there was a truck driver appointed on the grievance committee?

(Testimony of John Anderson.)

A. Yes, we had the driver on the grievance committee.

Q. Now, as a matter of fact, you readily concede there were a great many things that the officers of the Association did that were not called to your attention?

A. Well, there were several things that were not called to my attention.

Q. And when you stated yesterday that there had never been any separate, personal, grievances taken up by the Association with the management, you simply meant so far as you knew?

A. Yes, sir.

Q. Now, as a matter of fact, there could have been personal grievances taken up with the Association that you know nothing about?

A. Yes, sir; because I was only on one grievance committee.

Q. What you intended to say yesterday was, that so long as you were on that grievance committee, your grievance committee [181] had no personal grievances to take up with the management?

A. That's right.

Q. And as far as you know, during that period of time, when you served on the grievance committee, there were no personal grievances that were brought up before the committee?

A. That's right.

Q. For the committee to consider?

A. That's right.

(Testimony of John Anderson.)

Q. So then the fact is that there was nothing for your committee to do while you were on it?

A. That's right.

Q. What other committees have done, you don't want to say?

A. I don't know what they have done.

Q. You don't know what they have done. You stated that at the time Mr. Hibbler attended your first meeting in the fall of 1938, in November,—you think it was October or November—that he was the chief chemist?

A. Yes, sir.

Q. You used the word "chief"?

A. Yes.

Q. He was the only chemist?

A. He was the only chemist.

Q. He was the only chemist the company had?

A. Yes, sir.

Q. At that time, they had just a small laboratory? [182]

A. Yes, one room and an office adjoining it.

Q. And Mr. Hibbler was the only chemist?

A. That's right.

Q. He had no assistants of any kind?

A. No assistants whatever.

Q. So far as you know, he was just an employee of the company?

A. Yes, sir.

Q. With no supervisory powers at all?

A. None at all.

Q. And it was Mr. Hibbler whom you say said nothing about—at that first meeting—about bargaining for wages and hours?

A. That's right.

(Testimony of John Anderson.)

Q. But he did tell you about the kind of an organization that they had had at the Skelly Oil Company? A. Yes, sir.

Q. Did he tell you where he had previously worked? A. In Kansas.

Q. At the Skelly Oil Plant in Kansas?

A. Yes.

Q. And he had been a chemist at that plant?

A. Yes, sir.

Q. And he told you at that time of his experiences with that organization?

A. Yes, sir.

Q. Now, George Mann, you said had something to say at that [183] meeting? A. Yes, sir.

Q. That he likewise was an employee of the unit?

A. Yes, sir.

Q. Either an operator or a helper?

A. Yes, sir.

Q. As a matter of fact, he was a helper at that time, was he not? A. Yes, sir.

Q. These two men spoke on the subject of an organization, and George Mann was elected its first president? A. Yes, sir.

Q. Did he continue to be president as long as he stayed at the refinery? A. I think so.

Q. So far as you know, has there been at any time since the refinery began its operations, any officer of the refinery so far as you know that attempted directly or indirectly to influence you at all in what you did? A. No, sir——

(Testimony of John Anderson.)

Mr. Penfield: I object, as that calls for a conclusion of the witness.

Trial Examiner Riemer: Overruled.

A. (Continuing): I don't think that the company ever influenced the Association whatsoever in any way. [184]

Q. You have never been conscious of any such an influence? A. No.

Q. And so far as you know, at this first meeting that was held in the fall of 1938, the employees did exactly as they pleased?

A. They did,—we did. We had an open ballot on it.

Q. And I think that you said the balloting was unanimous? A. Yes, sir.

Q. At that meeting, there were forty or fifty people?

A. I would say in the neighborhood of that.

Q. And that would represent all of the employees except those that were actually on duty—or was the unit down at that time?

A. No, sir; it was running.

Q. And those people at the meeting represented all of the employees except the men working on the unit? A. Yes, sir.

Q. How many men work on the unit?

A. Eight.

Q. Eight men? A. Yes.

Q. So that, so far as you know, all of the employees except eight were present?

A. That is eight, that is the three shifts,—for

(Testimony of John Anderson.)

the four shifts,—that would be about four men who could not be there, one in the boiler house, two in the treater—one on the [185] treater——

Q. As far as you now recollect they were all there except four? A. Yes, sir. [186]

Q. You have understood after the first year that you were with the company, that because of the difficulties that the company had in operating the plant over a longer period of time, [187] and changes have had to be made in the original design, that the company was having very great difficulty in surviving? A. I have.

Trial Examiner Riemer: What is the purpose of this, Mr. Moyle?

Mr. Moyle: I think that it is material to show what kind of a company it was, and we will attempt to show, that before we get through, this company is not a company that could have influenced its employees.

Mr. Penfield: I can't see what that sort of testimony would prove.

Mr. Moyle: In other words, you can get a company to the point of financially where it is dependent on its employees, rather than to coerce them.

Mr. Penfield: I don't think so——

Mr. Moyle: Whether you think so or not, we are going to offer in this case, proof of the fact that it has been a question of whether the company folded up entirely, or getting the cooperation of this Association——

Trial Examiner Riemer: It is pretty conjectural. I think that I will sustain the objection at this

(Testimony of John Anderson.)

time to the introduction of any such testimony through this witness. When you get into your own case in chief, and propose to follow that line of questioning, I will consider it again.

Mr. Moyle: I think that is all. [188]

Trial Examiner Riemer: Mr. Penfield? Before you proceed, is the Association represented by any attorney or representative?

Mr. Moyle: The Association was not made a party. That is something that we could not understand. That is something that we could not understand, because the Association was never made a party. That is one difficulty. I have been wondering how we could adjudicate anything against this Association without the Association being made a party.

Trial Examiner Riemer: The Association is a party.

Mr. Penfield: They were served with notification——

Trial Examiner Riemer: Board's Exhibit 1-C shows that Delmar Peters was president of the Association, and was served with an order postponing the hearing. We have a return receipt signed by—it looks by B. J. Albertson—on behalf of the Idaho Refining Company Labor & Benefit Association. The same man evidently signed for the respondent, too.

On the 24th of June, the same Peters was served with a copy of the consolidated complaint, con-

(Testimony of John Anderson.)

solidated notice of hearing, amended charge, and charge. There is a return receipt for the same on behalf of the Association, signed by B. J. Albertson, dated June 26th. I take it, under the Consolidated Gas Case, in the Supreme Court, that the Association is properly before us at this time.

I am just thinking, Mr. Penfield, whether you, as the Board's Attorney here, want to notify the Association again by [189] telephone that this hearing is going on, and that they have a right to be represented, either by attorney or otherwise.

Mr. Penfield: The president is in the courtroom under subpoena at the present time.

Trial Examiner Riemer: What is the president's name?

Mr. Penfield: Mr. Peters.

Trial Examiner Riemer: Mr. Peters, are you present?

Mr. Peters: Yes.

Trial Examiner Riemer: Do you wish now to note your appearance for the record, on behalf of the Association? Will you please state your name and address?

Mr. Peters: Delmar Peters, 720 East Oak, Pocatello.

Trial Examiner Riemer: You may come up, if you wish.

Mr. Moyle: Would you mind giving him the advice that they are entitled to be represented by counsel?

(Testimony of John Anderson.)

Trial Examiner Riemer: Yes I will state it again, you are entitled to be represented by counsel, and that you may sit up here and participate in the hearing, and question witnesses, or produce your own.

Mr. Peters: I didn't understand that our Association was a party on this. We received the complaint. I never understood it, and that is the reason that we didn't have anyone to represent our Association.

Mr. Penfield: I believe that we sent a copy of the rules and regulations with the complaint, Mr. Examiner, and it was [190] our position that we didn't consider it necessary to do anything further.

Mr. Moyle: I am sure I didn't that/out of the rules and regulations, so Mr. Peters may be excused for not doing so.

You may come up and sit at the counsel table, and examine and cross examine witnesses. You haven't been prejudiced, because Mr. Anderson is the first witness who has testified at all concerning the Association. Is that correct?

Mr. Penfield: That is correct.

(Mr. Delmar Peters takes his place at the counsel table.)

Trial Examiner Riemer: Mr. Peters, you have the right to examine witnesses if you wish. I might state further, in advice to you, that your participation in the hearing so far as the examination of witnesses is concerned, is restricted or

(Testimony of John Anderson.)

confined solely to the issues pertaining to the Association. You may proceed, if you wish to examine the witnesses on anything and everything that concerns the Association.

Mr. Peters: Well, I don't feel capable of doing that.

Trial Examiner Riemer: It is very simple, and if you want to, you may, and you can consider in the meantime if you wish, the desirability of getting counsel to represent you, but it is not necessary at all. You can see from the nature of the hearing, so far as the questions that are asked, they are quite simple, and no particular genius is necessary in examining [191] the witnesses.

Mr. Moyle: I was just wondering if Mr. Peters was here during the direct examination yesterday?

Mr. Peters: I was here part of the time yesterday.

Mr. Moyle: Did you hear Mr. Anderson?

Mr. Peters: No.

Trial Examiner Riemer: Proceed, Mr. Penfield.

Redirect Examination

Q. (Mr. Penfield, continuing): Mr. Anderson, with respect to this meeting that you testified occurred about October, 1938, at which the formation of an employees' organization was discussed, did I understand you to say that all of the employees including the officers and supervisors were present?

A. I think that the biggest part of the office force was there.

(Testimony of John Anderson.)

Q. Did they vote and become members?

A. Yes.

Mr. Moyle: So there will be no understanding, you used the word "officers" and the witness used the word "office force."

The Witness: I said "office force". I don't mean Mr. Moyle. He wasn't there.

Q. (Mr. Penfield, continuing): Was Mr. Copen-
ing there?

A. No, Mr. Copening wasn't there.

Q. Was Mr. Webb there? [192]

A. Mr. Webb was there.

Q. Mr. Webb was the——

A. Treasurer.

Q. He was an officer, was he not?

A. I don't know the officers of the company. All I know is that he was treasurer.

Q. Was Mr. Moyle there?

A. I don't think so.

Q. Was Kermit Rice there?

A. Kermit Rice was there——

Trial Examiner Riemer: What was Kermit Rice at that time?

The Witness: He was a truck dispatcher or something.

Q. (Mr. Penfield, continuing): Who was the superintendent at that time? A. Caudet.

Q. Was he there? A. I think so.

Q. Did he become a member?

A. I don't know; I don't know whether he was

(Testimony of John Anderson.)

a member or not. He didn't say there long enough to join up, even if he had wanted to, that night.

Q. Isn't it a fact that officers of the corporation and supervisors became members and are members?

Mr. Moyle: I object to that as calling for a conclusion of the witness. [193]

Trial Examiner Riemer: If the witness knows, he may answer.

A. Well, I think—I know that Henninger belongs; Kermit Rice belongs, and Simpson belongs.

Q. Who is Spike Henninger?

A. Spike Henninger is over the loading dock. At that time, he was on the treating plant.

Q. What does he do now?

A. He is on the loading dock.

Q. Is he a member? A. Yes.

Q. You mentioned a man by the name of Simpson. A. Vic Simpson is yard foreman.

Q. At the present time? A. Yes.

Q. Was he yard foreman in 1938?

A. Yes.

Q. Who is superintendent of the plant at the present time? A. E. V. Smith.

Q. Is he a member?

A. I suppose he is.

Q. Do you know?

A. Yes, I know that he is a member.

Q. Was he at that meeting in October of 1938?

A. I don't know whether he was at the meeting or not.

(Testimony of John Anderson.)

Q. What was his position at that time? [194]

A. He was an operator.

Q. Did he later become assistant superintendent?
A. Yes.

Q. You testified that the employees assisted in the building of a change room where the meetings are held at the present time?

A. Yes, that's right.

Q. When was it that this building was built?

A. Well, I think that the building was started in 1939, the fall or early winter.

Q. Did you attend a meeting of the Association at which the putting up of the building was discussed?

A. Well, I think that we had a meeting of the Association and elected a grievance committee to go to Mr. Moyle and see if we could not get a new change building.

Q. When was that meeting?

A. Well, it was in 1939.

Q. What part of 1939?

A. Well, I would say the fall.

Q. The late fall? A. The late fall.

Q. October?

A. I would say about September or October, somewhere along there.

Q. Were you a member of the committee? [195]

A. No.

Q. Did you attend any later meetings of the Association at which the committee reported on those meetings with the company?

(Testimony of John Anderson.)

A. Yes, I think that the Association appointed a committee to go to Mr. Moyle and talk to him and agreed to furnish the labor if the company would furnish the materials.

Q. Did you hear this at a later meeting of the Association?

A. The Company agreed to furnish the material if we furnished the labor.

Q. How much later was this meeting?

A. We had a meeting every month at that time.

Q. Was it at the regular monthly meeting?

A. Yes.

Q. You were informed that the company would furnish the material?

A. The company would furnish the material.

Q. Did you assist in putting up this building?

A. Yes, I helped.

Q. Were you compensated for that?

A. No.

Q. That was built on company property?

A. Yes, sir.

Q. Did the company furnish all the material?

A. The company furnished all the material.

Q. Has that been used for a meeting place for the Association [196] ever since?

A. Meeting place, change room shower room.

[197]

Recross Examination

Q. You were asked about Mr. Henninger. Now, at the time that [206] this meeting was held in Oc-

(Testimony of John Anderson.)

tober or November, 1938, Mr. Henninger was just an employee? A. Yes.

Q. Working in the treating plant?

A. Yes.

Q. And Mr. Smith was just an employee working on the unit? A. He was an operator.

Q. And Mr. Simpson was just an employee working in the yard?

A. No, sir; he was yard foreman at that time.

Q. Are you sure of that? A. That's right.

Q. But he worked under the superintendent of the plant direct? A. Yes, sir.

Q. And Kermit Rice, at that time, you say he was a dispatcher? A. Truck dispatcher.

Q. How many trucks did the company have in October, 1938?

A. They didn't have a great deal.

Q. They only had one, didn't they?

A. I don't remember how many they had.

Q. And Kermit Rice was the driver?

A. I don't think so.

Q. You don't think that Kermit Rice was driving in 1938?

A. I don't recall him ever driving.

Q. Do you recall where the refinery got its first truck?

A. No, I remember it was an old Studebaker.

[207]

Q. And they got it from the United Company?

A. I don't remember. When I came up to work, they had three or four old trucks.

Q. But there was only one truck hauling pe-

(Testimony of John Anderson.)

troleum products at that time, and that was the old Studebaker?

A. Well, I didn't come until August, and in August there was more than one truck.

Q. But Kermit Rice at that time was one of the drivers?

A. I don't think so—not since I have known him.

Mr. Moyles: That is all.

Redirect Examination

Q. (Mr. Penfield) At this meeting at which Mr. Rosqvist spoke, who was the plant manager at that time?

A. Val Gaudet, he was superintendent; M. B. Kaye was assistant manager.

Q. At the time of this meeting in the spring of 1939 when Rosqvist spoke? A. Oh, no.

Q. Or the first meeting?

A. Well, I suppose D. F. Gurtsenberg.

Q. Do you mean general manager or plant superintendent? A. He was general manager.

Q. The same position that Mr. Moyle holds at the present time?

A. No, he was manager over the refinery here and the one at Spokane. [208]

Q. Was he present at that meeting?

A. No.

Q. Who was the plant superintendent.

A. Glenn Kinnich, at that time.

Q. Was he present at that meeting?

A. No.

(Testimony of John Anderson.)

Q. Was Kermit Rice present at that meeting?

A. I think so. [209]

Mr. Penfield: Mr. Moyle, with respect to this list of officers and directors of the Idaho Gas & Oil Company, this is the list that you prepared for us, is it?

Mr. Moyle: Yes, that is right.

Mr. Penfield: That Mr. Gilbert Moyle was unable to furnish yesterday. I think probably that it would be well to offer this; if the company will stipulate that this is a correct list, we will offer this in evidence.

Mr. Moyle: No objection.

Trial Examiner Riemer: It is admitted, and marked in evidence as Board's Exhibit 7.

(Whereupon the document hereinabove referred to was marked and received in evidence as Board's Exhibit 7.)

BOARD'S EXHIBIT No. 7

Officers and Directors—Idaho Gas & Oil Co.

Original Officers:

H. W. Henderson, President

Henry D. Moyle, Vice-President

John H. Peterson, Secretary-Treasurer

Directors:—Same

Later:

John H. Peterson, President

Henry D. Moyle, Vice-President

Arch Webb, Secretary-Treasurer

Directors:—Same

(Testimony of John Anderson.)

Later:

John H. Peterson, President

Henry D. Moyle, Vice-President

Frank Copening, Secretary-Treasurer

Directors:—Same

Now:

B. J. Albertson, President

Henry D. Moyle, Vice-President

William McMillan, Secretary-Treasurer

Directors:—Same

Mr. Penfield: I will call Mr. Duncan.

HASKELL DUNCAN

was thereupon called as a witness by and on behalf of the Board, and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your name, please?

The Witness: Haskell Duncan.

Trial Examiner Riemer: Where do you live?

The Witness: 1508 East Center Building.

Direct Examination [211]

Q. (Mr. Penfield): Where are you employed at the present time?

A. The Idaho Refining Company.

Q. In what capacity?

(Testimony of Haskell Duncan.)

A. Stillman, or operator.

Q. When did you first go to work for the company?

A. September 16, 1938.

Q. Were you employed in the same capacity at that time?

A. Yes, sir.

Q. And you have been doing the same job ever since?

A. With the exception of about a year; I served as night supervisor for about a year.

Q. Night supervisor? A. Yes.

Q. What were your duties as night supervisor?

A. Largely to oversee some inexperienced operators.

Q. What year was that, Mr. Duncan?

A. Oh, it was in 1940, continuing over into March, 1941.

Q. From March 1940 to March, 1941?

A. No, it started, I believe, in possibly June in 1940. It wasn't quite a year.

Q. Did you have complete charge of the plant during the nights?

A. That was my understanding.

Q. What was your compensation?

A. \$200 a month.

Q. Were you paid on a salary as a stillman?

[212]

A. Paid by the hour.

Q. During the time that you were night supervisor, you were paid on a salary?

(Testimony of Haskell Duncan.)

A. Flat salary.

Q. Did you hire the employees?

A. I had nothing to do with hiring them.

Q. Could you discharge an employee who was unsatisfactory?

A. I might have brought some pressure to bear in that direction. I don't know, I never tried.

Q. You did direct them in the work?

A. Largely oversee them, and keep the inexperienced people out of trouble.

Q. Are you a member of the Idaho Refinery Company Employees Benefit & Labor Association?

A. I am.

Q. When did you first join this Association?

A. Any date I would give would be a guess. Sometime in the spring of 1939.

Q. And you testified that you came to work at what time? A. In September, 1938.

Q. It was some months after you came to work?

A. Yes, sir.

Q. Would you say March or April, or earlier or later?

A. Well, as I say, that would be a guess. It was in the spring—early spring possibly [213]

Q. Have you ever held an office in the Association? A. Yes, sir.

Q. What office?

A. I was on the grievance committee one term, and president one term.

(Testimony of Haskell Duncan.)

Q. What was the term that you were president?

A. I believe that it was the latter part of 1939.

Q. What dates in 1939?

A. Well, the exact dates escape me—say the last half of the year, or something to that effect.

Q. From June to December?

A. At that time, were elected every six months.

Q. From June to December?

A. That would be roughly it. It is not exact.

Q. When were you on the grievance committee?

A. I believe that I was elected on the grievance committee or appointed, I don't remember which, shortly after I joined the Association.

Q. How long did you continue to serve on the grievance committee?

A. Just a few months, three or four.

Q. Did you take up any grievances with the management?

A. No, none came to our attention.

Q. None whatever?

A. Not during that period, no. [214]

Q. Are those the only committees that you served on?

A. I have been on the safety committee at least two terms. I am chairman of it.

Q. When are the last two terms?

A. I am at present a member of the safety committee.

Q. And you were elected at what time?

Mr. Peters: January.

(Testimony of Haskell Duncan.)

A. I imagine that is correct.

Q. (Trial Examiner Reimer) What year?

A. This year.

Q. (Mr. Penfield, continuing): Is that term for a year's period?

A. I believe it is, yes.

Q. Did you serve the preceding year on the safety committee?

A. I think that we did, six month terms that year, didn't we?

Well, it was continuing from the previous term.

Q. You served about a year and a half on the safety committee?

A. That would be approximately correct.

Q. Were you on the safety committee during the period that you were night supervisor?

A. I believe so. [215]

Q. Where do you purchase the gasoline? [217]

A. At the Covey station on Fifth and Oak, I believe. I don't know the streets too well.

Q. Is that the only place that you can receive such discount?

A. Yes, on purchases, or on a charge basis, handled on a payroll deduction plan at that station.

Q. Will you explain to us how that works in case you go in for a purchase of gasoline?

A. I sign a ticket for what I purchase. It is run through the Covey office, and I presume that they handle the discounts.

Q. Is that amount deducted from your wages, or salary?

A. Yes.

(Testimony of Haskell Duncan.)

Q. How often are these deductions made?

A. Every two weeks, I believe—every pay day.

Q. Is this discount on gasoline and accessories limited to members of the Association?

A. I understand not at present, no.

Q. Was it ever limited to members of the Association?

A. I believe that it was in the beginning, yes,—the beginning of the discount.

Q. When did you first hear anything about a discount on purchases?

A. You mean the exact date?

Q. Yes, as best you can recall it.

A. Well, that was in the early spring of 1939, to the best of my memory.

Q. Was that after you joined the Association?

[218]

A. Just before.

Q. What did you hear?

A. Well, a meeting was called of the employees one morning in the office. I was going off shift, so I stopped in at the meeting.

Q. Can you recall just about when that meeting was?

A. I imagine that it was in the spring of 1939, as I remember.

Q. The early spring, March or April?

A. I couldn't give the month.

Q. It was before you joined the Association?

A. Yes.

(Testimony of Haskell Duncan.)

Q. Was this a meeting of the Association?

A. I don't know whether it was limited to the Association members or not.

Q. Where was this meeting held?

A. In the north steps of the office.

Q. Who was presiding at this meeting?

A. Well, I don't know whether they had a formal presiding officer or not.

Q. Who addressed the meeting?

A. Mr. Moyle.

Q. Mr. H. D. Moyle? A. Yes.

Trial Examiner Riemer: H. D. or Gilbert Moyle

The Witness: Mr. Henry D. Moyle. [219]

Q. (Mr. Penfield, continuing) That is the vice-president of the company?

A. I have been told that that is his title. I don't know much about the official business.

Q. What did he say?

A. Well, Mr. Moyle talked to us about a plan to help establish housing quarters on some land opposite the refinery, and also suggested that he would give us a discount on products, for which we were very grateful.

Q. Did he say who was to get this discount?

A. It runs in my mind that it was members of the Association.

Q. Did you subsequently join the Association?

A. Yes, I joined shortly after that.

Q. Did the question of discounts have any effect on your decision to join?

(Testimony of Haskell Duncan.)

Mr. Moyle: I object to that on the grounds that it calls for a conclusion.

Mr. Penfield: I think that he knows that.

Trial Examiner Reimer: We have been permitting witnesses to state conclusions. The objection is overruled.

A. I expect it did. I was buying gas before I came to Pocatello at 12 cents a gallon, and it was 25 cents here, and that kind of hurt.

Q. How much reduction did you get per gallon?

A. I believe about 7 cents.

Q. Are you still getting that reduction? [220]

A. That I don't know. We are getting a reduction, but I don't know what the retail price is.

Q. Did I understand you to testify the deductions are not at the present time limited to members of the Association?

A. I have been told that. I don't know much about that end of the business.

Q. Do you have any knowledge as to when the change took place?

A. No, I don't.

Q. You don't know for sure then that the change has taken place?

A. No, I don't know that for sure, other than hearsay.

Q. Was it ever announced at any meeting of the Association?

A. Not that I heard.

Q. Are you a member of the Board of Directors?

A. Yes, sir.

(Testimony of Haskell Duncan.)

Q. How long have you been a member of the Board of Directors of the Association?

A. I believe since we changed to have the Board of Directors handle the business.

Q. How does it happen that you are a member of the Board of Directors?

A. As chairman of the committee on which I serve.

Q. Are chairmen of all committees members of the Board of Directors?

A. Yes, sir. [221]

Q. You have been a member for about a year and a half, then?

A. Of the Board of Directors?

Q. Yes. A. Yes, I believe so.

Q. Do you regularly attend the meetings of the Board?

A. Not too regularly. I have been building a house which takes up most of my spare time.

Q. Do you recall any meeting of the Board at which was taken up the question of extending the discount to persons other than members of the Association?

A. I don't recall hearing that, no. I doubt if the Association would determine that, anyway.

Q. What is the correct name of this labor organization of the Idaho Refining Employees at the present time?

A. I don't know that I can quote it verbatim or

(Testimony of Haskell Duncan.)

not. Something like Idaho Refining Employees Benefit & Labor Association.

Q. Did that organization ever have any different name?

A. The word "Labor" was added to it at one time.

Q. Do you recall what the name of it was prior to that?

A. It would be just the same thing without the word "Labor."

Q. The Idaho Refining Company Employees Benefit Association?

A. I believe Mutual Benefit Association.

Q. When was that name changed?

A. Well, my memory is pretty hazy on that. I would say the [222] latter part of '39, but possibly the early part of 1940.

Q. Are you acquainted with the circumstances that led up to the change of the name?

A. Well, the only thing that I know of is that that was brought up at one of the regular monthly meetings.

Q. A meeting of the membership?

A. Yes, sir.

Q. Who brought it up?

A. Mr. Henninger, I believe.

Q. Who was Mr. Henninger?

A. He is the foreman of the loading dock—I think then he was still on the treating plant, I wouldn't be sure of that.

Q. When was that?

(Testimony of Haskell Duncan.)

A. I gave you about a six months' leeway—I don't know.

Q. How close could you put it?

A. It is difficult to remember. It has been some time.

Q. Was Mr. Henninger at or on the loading dock at that time?

A. I believe that he was still in the treating plant, but I am not certain.

Q. Was any reason advanced for changing the name?

A. His argument was that it would comply with the National Labor Relations Law by making it a bona fide labor association.

Q. Was anything said about changing the functions of the organization at that time?

A. Not to my remembrance. [223]

Q. Was a vote taken at this meeting?

A. Yes, sir.

Q. What was the vote?

A. Well, they voted, "as carried",—I don't remember the balloting.

Q. But they voted to change the name?

A. To add those words to the title, yes.

Q. Did you have anything to do with the negotiations that led to the signing of the contract between the company and the Association dated in June, 1941?

A. No, sir.

Q. Was there a contract entered into between the company and the Association in June, 1942?

(Testimony of Haskell Duncan.)

A. We reached an agreement—was that signed, Mr. Peters?

Mr. Peters: Yes.

Q. (Mr. Penfield, continuing) Did you have anything to do with the negotiations with respect to that contract?

A. I attended the meeting when we met with Mr. Gilbert Moyle.

Q. How did you happen to attend the meeting?

A. Mr. Peters requested me to take the place of a committeeman who was on his vacation.

Q. Was this a meeting of the grievance committee?

A. It was the grievance committee, and Mr. Peters as president and me as a replacement.

Q. When was this meeting held? [224]

A. During the latter part of May. I don't recall the exact date.

Trial Examiner Riemer: 1942?

The Witness: Yes, sir; that is the meeting that you are referring to, isn't it?

Mr. Penfield: That is correct.

Q. (Mr. Penfield, continuing) Had the members of your committee on which you served discussed any wage scale prior to meeting with Mr. Moyle?

A. Well, not a formal meeting. There was a list circulated among the various job holders—employees—every one put down what he thought he was entitled to as a raise, and I believe without

(Testimony of Haskell Duncan.)

exception they all put down the same thing, as the first man that wrote it down, did.

Q. Did the committee then draw up a wage scale?

A. We did, and listed there what these fellows asked for.

Q. Was that list presented to Mr. Moyle?

A. Yes, Mr. Peters presented it to him.

Q. Were the names of any truckdrivers included on that list?

A. There were no names on the list at all. It was a list of jobs, rather than names.

Q. Well, were the jobs of any truckdrivers included?

A. Yes, I believe so.

Q. Were truck mechanics also included?

A. I believe so, listed as mechanics. [225]

Q. And the office employees?

A. No, no office employees.

Q. Tell us what occurred at this meeting, with Mr. Moyle, that you testified to which took place the latter part of May, 1942.

Trial Examiner Riemer: Is this Henry or Gilbert Moyle?

The Witness: Gilbert Moyle.

A. (Continuing) Mr. Moyle looked the list over and maybe winced a bit, and said, "It is pretty steep", and he went ahead and told us something about the company financially, and took the matter under advisement and asked us to come back in three days, or five days, I don't remember which.

(Testimony of Haskell Duncan.)

Q. (Mr. Penfield, continuing) Did he say anything about the inclusion of truckdriver on this list? A. Not that I recall.

Q. Did you attend a subsequent meeting with Mr. Moyle? A. Yes, I did.

Q. Was that about four or five days after the first meeting?

A. Three, four or five, I don't remember; it was during the same week.

Q. What occurred at this meeting?

A. Well, Mr. Moyle told us that he had taken the matter under advisement, made some calculations, told us the approximate cost of the raises asked for, and handed us what he considered the best the company could do in the way of a compromise. [226]

Q. Did he hand you a list of wage scales that the company felt they could pay?

A. That is what it amounted to, I believe, yes.

Q. Did that list include the truck drivers?

A. I believe so.

Q. What steps did the grievance committee take following the receipt of this wage scale of Mr. Moyle's?

A. Well, I went home, and I don't know what the rest of them did.

Q. Was any report made to the membership?

A. Not immediately. A meeting was called, but not enough attended,—I suppose for lack of interest—to have a quorum.

Q. Who called the meeting?

(Testimony of Haskell Duncan.)

A. Mr. Peters .

Q. Was there a notice posted?

A. I believe so—wasn't there, Bill?

Mr. Peters: Yes.

Mr. Penfield: Just testify yourself, please.

Q. (Mr. Penfield, continuing) Did you see that notice?

A. As I recall, I was off on my days off. Each week, we have one, two or three days off, and I don't believe that I saw it for that reason.

Q. Did you attend the meeting?

A. No. [227]

Q. Do you know whether or not any action was taken at that meeting?

Mr. Moyle: I object to that on the ground that it would be a pure conclusion of the witness. He said that he wasn't there.

Mr. Penfield: He might have knowledge of it.

Mr. Moyle: It would be hearsay.

Trial Examiner Riemer: Overruled.

A. Well, I was told that there was not a quorum present so the deciding of it was left up to the Board of Directors.

Q. (Mr. Penfield, continuing) Was this meeting held on the same day that you had this second meeting with Mr. Moyle? A. No.

Q. How soon following that meeting was it held?

A. I believe three or four days, but I am not certain.

Q. Was there a meeting of the Board of Di-

(Testimony of Haskell Duncan.)

rectors following the second meeting with Mr. Moyle?

A. We had a regular monthly meeting that came a few days after that.

Q. Did that come a few days after the meeting of the membership that was called? A. Yes.

Q. Was any action taken at the meeting of the Board of Directors? [228]

A. It was decided to adopt the wage schedule offered by Mr. Moyle.

Q. Did that schedule include the truck-drivers?

A. I believe not.

Q. Had there been any change in the schedule as offered by Mr. Moyle?

A. I believe there were two specific positions left off the list. Other than that, it was the same.

Q. What specific positions were left off?

A. Drivers and mechanics.

Q. Do you know how it happened that these names were taken from the list?

A. I was told that it was a typographical error in the list. That is hearsay with me.

Q. Then the list which was presented to the Board of Directors did not contain the job of truckdrivers and mechanics?

Mr. Moyle: I object to that on the ground that the list itself would obviously be the best evidence.

Mr. Penfield: Well, I think that he can testify to that.

Trial Examiner Riemer: Can that be produced?

(Testimony of Haskell Duncan.)

Mr. Moyle: They could produce the contract—

Mr. Penfield: I have every intention of introducing the contract.

Mr. Merrill: Then it is obviously immaterial to ask this witness what the contract contained. [229]

Mr. Penfield: I think that it is material to develop the fact that these names were on and taken off——

Trial Examiner Riemer: Overruled. Read the last question.

(Thereupon the last question was read aloud by the reporter as hereinabove recorded.)

A. That is correct, to the best of my remembrance.

Q. (Mr. Penfield, continuing) Was a vote taken by the Board of Directors? A. Yes.

Q. What was that vote?

A. We voted to adopt the raise as offered by Mr. Moyle.

Q. Was anything said about signing an agreement? A. Yes, there was.

Q. What was said?

A. I don't recall exactly. I believe that the agreement was to be patterned after the previous one of last year, only this was to be for six months instead of a year.

Q. Did you have anything to do with drawing up or signing that agreement?

A. No, I didn't.

(Testimony of Haskell Duncan.)

Q. What dues are paid by the Association members? A. 50 cents per month.

Q. How are these paid?

A. By payroll deduction.

Q. Is there any written authorization for the payroll deduction? [230]

A. The secretary could answer that better than I. The time I joined, I signed a slip to that effect.

Q. You signed an authorization?

A. Yes, sir.

Q. Did you regularly attend meetings when you first joined the Association?

A. Fairly regularly. Of course, when I was on shift——

Q. How often were meetings held?

A. Monthly.

Q. Where were they held?

A. At first, they were held in the company offices.

Q. What company offices—the offices occupied by whom?

A. Well, there are, I understand, three of four companies housed there in one building. At that time, I guess that it was considered the Idaho Refining Company offices. Usually they met in the west wing, anyway, of the office.

Q. Since you joined the Association, has there been an change in regard to the holding of meetings?

A. Yes, we have meetings now of the whole

(Testimony of Haskell Duncan.)

membership only on a special call, or on the annual date for elections.

Q. When did this change take place?

A. Approximately a year and a half ago, as I recall.

Q. How did the change come about?

A. Well, for some time, several fellows had felt that monthly meetings were accomplishing nothing, but wasting our time,— [231] too much talking and no action, or anything, and we felt that it would be better to have a board of directors handle the affairs of the Association, so we talked that over and voted and I believe that the president appointed a committee to overhaul the by-laws to permit that.

Q. Were the by-laws subsequently changed?

A. Slightly. Enough to permit the directors to handle the business affairs.

Q. Was this matter voted on by the membership?

A. What matter?

Q. The change in the by-laws?

A. Yes.

Q. Did you attend a meeting at which it was voted on?

A. Yes.

Q. Was that a meeting of the membership?

A. Yes.

Q. Especially called?

A. I believe that it was called especially for that purpose, yes, sir.

Q. How often do the board of directors meet?

A. Monthly. Not later than the 10th of each month.

(Testimony of Haskell Duncan.)

Q. Where do they meet?

A. In the hall and change room that has previously been mentioned.

Q. Do any of the executives or supervisors of the company ever [232] attend these meetings of the Board of Directors?

A. No, sir; not any meeting that I ever attended.

Q. Did you ever attend any meeting when the membership attended?

A. Well, originally everybody out there attended meetings, practically everyone, as members of the Association.

Q. Did that include executives or supervisors?

A. I don't believe I ever saw Mr. Copening, Mr. Moyle or Mr. Webb attend, or Mr. Peterson.

Q. Who is Mr. Peterson?

A. I think he is treasurer of the company.

Trial Examiner Riemer: John Peterson?

The Witness: Yes.

Q. (Mr. Penfield, continuing) And by Mr. Webb, you mean Arch Webb? A. Yes, sir.

Q. What others do you recall attended?

A. That would pretty well cover the officers at that time, I believe.

Q. How about the supervisory employees?

A. Well, what particular persons do you have in mind?

Q. Well, the superintendent of the plant or any of the foremen that you recall who attended the meetings?

(Testimony of Haskell Duncan.)

A. I think that the superintendent attended occasionally. We changed superintendents several times, it would be pretty hard to keep that in mind.

[233]

Q. Did you ever see Kermit Rice at any of the meetings? A. Yes, Kermit attended.

Q. Did any of these foremen or supervisors serve on any of the committees?

A. Mr. Simpson was president, I believe, two terms, possibly three.

Q. Who is Mr. Simpson?

A. The yard foreman.

Q. Was he yard foreman during the term that he was president? A. Yes.

Q. Do you recall when he was president?

A. Not for sure. I believe that he became president when Mann left the services of the company. That was in the spring of 1939.

Q. Was that before or after you joined the Association? A. After, I believe.

Q. Was he president during the time that you were a member of the Association?

A. Yes. I might clarify Simpson's position, a little bit. He is yard foreman, but he gets right in and works with the rest of the boys, especially on clean-ups.

Q. Does he have any supervisory authority?

A. He has the running of the yard gang, whatever it constituted, someone has to direct it.

Q. Does he hire and fire employees in the yard gang? [234]

(Testimony of Haskell Duncan.)

Mr. Moyle: I think that calls for a conclusion of the witness.

Trial Examiner Riemer: If he knows.

A. I don't recall him ever hiring or firing men directly. He may have made recommendations.

Q. How many men work under him, if you know?

A. They are getting a little scarce,—about four or five, now, I think.

Q. Have there been more at other dates?

A. Yes, they have had as high as possibly 15 during the clean-out periods, when the stills shut down.

We have some extra men we bring in, and he is in charge of those, also.

Q. To your knowledge, has the Association ever paid rent to the company for the use of its premises?

A. I never heard of it.

Mr. Moyle: You mean outside of the building of this building?

Mr. Penfield: I wasn't limiting it to that.

Trial Examiner Riemer: You may examine the witness, later. Anything else, Mr. Penfield?

Mr. Penfield: No, that is all.

Cross Examination [235]

Q. (Mr. Merrill) The Association members, I believe, bestowed their labor on the building of that hall in which you now meet, did they not?

A. Yes, we built it, or largely so.

Q. And you did it on your own time?

A. Yes, sir.

(Testimony of Haskell Duncan.)

Q. And without any pay from the company?

A. Yes, sir.

Q. And you built it there on the company property?

A. Yes, sir.

Q. And you now use it under those circumstances?

A. Yes.

Q. And that has been used by the Association continuously since it was built?

A. Yes.

Q. And that has been about a year and a half, has it not, approximately?

A. Anyway that long. It is pretty hazy in my mind when it was completed.

Q. It serves its purpose exclusively for the members of the Association?

A. I wouldn't say exclusively, no. All the employees out there use it for a change room, the day shift uses it for a lunch room, and there are showers and toilets. [236]

Q. You spoke of a meeting to change these by-laws, or overhaul them. When did that meeting occur?

A. It must have been about two years ago. [237]

Q. At whose suggestion were they overhauled—members of the Association exclusively?

A. Yes, sir.

Q. The company didn't have anything to do with overhauling those by-laws?

A. No, there was a group dissatisfied with the way that the meetings were going.

Q. Well, now, who was the directing head of the revamping of the by-laws?

(Testimony of Haskell Duncan.)

A. Well, I presume that you would say the president of the Association at that time.

Q. Did he appoint a committee for that purpose? A. Yes, sir.

Q. Did he consult, if you know, with anyone outside of the Association?

A. I would have no knowledge of that.

Q. Were you a member of the committee that assisted in the revamping of them? A. I was.

Q. At the time that you revamped them, did you have forms from another similar association?

A. There was a form there, yes.

Q. From what association?

A. Skelley Oil Company of Eldorado, Kansas.

Q. That was the form that you followed in the revamping of [238] your by-laws?

A. We got some ideas from that, yes.

Q. Had you previously worked for the Skelley Oil Company? A. No, sir.

Q. For whom did you work prior to coming here? A. The Shell Oil Company.

Q. Where? A. Kansas City, Kansas.

Q. When these by-laws were overhauled, was the name changed? A. I believe not.

Q. When was the name changed with reference to the overhauling of the by-laws?

A. It wasn't changed—oh, I see.

Q. I mean with reference to time?

A. Yes, when that "and Labor" was added?

Q. Yes; was that before or after?

A. That was before.

(Testimony of Haskell Duncan.)

Q. Now, with reference to the change of these by-laws, what was the pertinent change?

A. Well, practically the only change was that the business affairs of the organization were placed in the hands of the Board of Directors.

Q. And thereafter the Board of Directors handled the affairs? A. That's right.

Q. I believe you said no supervisor or any officer of the [239] company ever attended any of the board meetings?

A. I don't believe that I said that. Mr. Simpson was president of the Association at the time that we overhauled them. He was chairman of that meeting, and the chief chemist was a member.

Q. The chief chemist was who?

A. Mr. G. L. Farnsworth, at that time. [240]

Q. Now, with reference to Mr. Simpson, he merely directed the crew in the yard wherein he works, I believe you said? A. That's right.

Q. And during the period of time that he was president of the Association, the by-laws were amended?

A. That is the way that I remember it, yes.

Q. Have you ever seen any officer of the corporation ever before the Board, unless the Board called upon the officers for some contracting negotiations?

A. You mean this board of directors we are now operating?

Q. Yes, or any board.

(Testimony of Haskell Duncan.)

A. Well, that is the only board that I can think of. I haven't seen any officer before them, no.

Q. And it handles the affairs of the Association?
A. That's right.

Q. Now, I believe that you said membership in the Association entitled you to sick benefits?

A. Yes, sir.

Q. And to hospital benefits? [241]

A. Yes, sir.

Q. And to various other similar types of benefits?

A. Well, we used some of our extra proceeds from our concession out there as funds to hold parties and dances.

Q. So, you have social benefits, likewise?

A. Yes, sir.

Q. Now, the individuals who become employees of the company have the right to join the Association?
A. Oh, yes.

Q. And they do join the Association, usually, I understand?

A. I think it has been usually the case.

Q. (Mr. Merrill, continuing) Now, Mr. Duncan, to your knowledge has any officer or supervisor of the Idaho Refining Company dominated or coerced or directed the affairs of your Association?

Mr. Penfield: I object that that calls for a conclusion.

Trial Examiner Riemer: Overruled.

(Testimony of Haskell Duncan.)

A. I didn't think so, no; I would say "no", to that.

Q. (Mr. Merrill, continuing) The Association has acted absolutely independently, has it not?

A. To the best of my knowledge.

Q. And you have observed nothing that would indicate the [242] contrary?

A. That's right.

Q. I believe that you stated that when the name of the Association was changed, they were advised by one of the members of the Association that it was to conform to the National Labor Relations Act?

A. Mr. Henninger made that argument before the meeting that day.

Q. So that it would be a bargaining unit?

A. That was his argument.

Q. And that change then was effected by a vote of the Association?

A. That's right.

Q. And at an Association membership meeting?

A. Yes, sir.

Q. You spoke of Mr. Henry D. Moyle having a meeting with the employees?

A. Yes, sir.

Q. That meeting occurred, I understand, in the yard?

A. Yes, it was outside of the office.

Q. And he spoke from the steps of the office?

A. That's right.

Q. Isn't it a fact that all of the employees of the Association were called,—I mean the employees of the company?

(Testimony of Haskell Duncan.)

A. I believe that is correct. [243]

Q. Mr. Moyle, as a matter of fact, never mentioned the Association, did he?

A. I repeat, that as I remember it, Mr. Moyle said the discount would be made to the members of the Association.

Q. You may be mistaken on that?

A. It is possible.

Q. It is possible that he made the comment that the discount would be allowed to the employees of the company?

A. That has been three years ago, or a little more, and I am possibly mistaken, but my memory serves me to the contrary.

Q. What about the housing plan, was that for any employee or members of the Association?

A. I believe that was for employees.

Q. Now, Mr. Moyle at that time never mentioned anything about anybody joining any Association, did he?

A. No.

Q. And never made any comment as to whether the company wanted them to, or whether it didn't?

A. No. [247]

Trial Examiner Riemer: Mr. Peters?

Mr. Peters: No questions.

Q. (Trial Examiner Riemer) Does the Association have any concessions out in the refinery?

A. We operate a drink dispenser, a mechanical device, and sell cigarettes and tobacco through the boiler department.

(Testimony of Haskell Duncan.)

Q. Is this drink dispenser one of these things where you put in a nickel and out comes a bottle of Coca Cola?

A. Well, we have a selector. We can choose our drink.

Q. You have a choice? A. Yes.

Q. Who owns this mechanical apparatus?

A. The Association.

Q. Who makes the profit, if any, on the drinks?

A. The Association.

Q. What other concession is there?

A. The last few months, we have been handling cigarettes and other tobaccos from the boiler house, with the boiler firemen selling them and collecting for them, and doing it without pay.

Q. Who makes the profit, if any, on the cigarettes?

A. That goes to the Association treasury. [249]

DELMAR R. PETERS

was thereupon called as a witness by and on behalf of the Board, and being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your full name for the record.

The Witness: Delmar R. Peters.

Trial Examiner Riemer: Where do you live?

The Witness: 720 East Oak, Pocatello.

(Testimony of Delmar R. Peters.)

Direct Examination

Q. (Mr. Penfield) Where are you employed?

A. Idaho Refining Company.

Q. In what capacity?

A. Gasoline treater. [250]

Q. Are you a member of the Association?

A. Yes, sir.

Q. When did you join? A. In May, 1939.

Q. Was that immediately after you came to work? [251]

A. Yes, immediately after I came to work.

Q. Have you ever held any offices in the Association?

A. Yes, this is my second time as president.

Q. Did you hold any office before you became president? A. No.

Q. Did you serve on any committees?

A. No.

Q. When were you first elected president?

A. January, 1941.

Q. When were you re-elected president?

A. January, 1942.

Q. And when does your present term expire?

A. The 31st of December, 1942.

Q. In May of 1941, did you participate in any negotiations with respect to wage increases?

A. Yes, I did.

Q. Will you explain your participation?

A. Well, my participation was in the role of president, at the meeting with Mr. Gilbert Moyle.

Q. Now, will you please explain, was there a

(Testimony of Delmar R. Peters.)

petition passed around in regard to wage increases at that time? A. Yes, there was.

Q. Who was passing that petition around?

A. As I recall it, it was the operators on the unit.

Q. Was this a committee of the Association?

[252]

A. There was no special appointed committee.

Q. This was not the grievance committee, then?

A. No, sir.

Q. Nor any other committee?

A. It wasn't the grievance committee, no.

Q. The men were merely members of the Association?

A. Yes, they were members of the Association.

Q. Is it your testimony that it was not an official committee of the Association?

A. It wasn't at first in the circulation of the petition, but it fell into that category shortly after.

Q. Did you attend a meeting with Mr. Moyle in May of 1941? A. Yes, sir.

Q. In what capacity?

Mr. Moyle: Did you say 1941?

Mr. Penfield: I said 1941.

A. I was president.

Trial Examiner Riemer: Will you please distinguish between Henry Moyle or Gilbert Moyle?

Mr. Penfield: Yes, I am sorry.

Q. (Mr. Penfield, continuing): With Mr. Gilbert Moyle? A. Yes, sir.

Q. Who was with you?

(Testimony of Delmar R. Peters.)

A. Well, at that time, members of the Association contacted Mr. Moyle for a meeting, and he gave us the date to call the [253] meeting when he could meet with us.

Q. Who were present when you contacted Mr. Moyle for a meeting?

A. No, we contacted him through our superintendent.

Q. Who did? A. The Association did.

Q. You personally, acting as president of the Association? A. Yes.

Q. Did you have a meeting?

A. Yes, we did.

Q. Who was present at this meeting?

A. The members of the Association.

Q. Did you have any meeting before that of a committee? A. No.

Q. Do you know if a wage scale had been presented to the company before this meeting of the members of the Association? A. Yes, sir.

Q. Who had presented that?

A. W. M. Miller, the superintendent.

Q. Is it your testimony that there never had been a meeting at which a committee of the employees presented a wage scale to Mr. Moyle?

A. Not at that time, no.

Q. It is your testimony that there was not such a meeting?

A. That's right; it was presented to Mr. Moyle through the [254] superintendent.

(Testimony of Delmar R. Peters.)

Q. (Trial Examiner Riemer): How did Mr. Miller get this wage scale?

A. Well, we gave—the Association gave it to Mr. Miller to present to Mr. Moyle.

Q. How did the wage scale come into your possession?

A. Well, by the members of the Association.

Q. (Mr. Penfield, continuing): By what members?

A. I don't exactly remember the names of the members.

Q. Do you remember any of the names?

A. No, I don't distinctly remember any one particular person.

Q. What occurred at this meeting of the membership that you stated was held in the latter part of May?

Mr. Moyle: This is 1941?

Mr. Penfield: Yes, 1941.

A. Well, Mr. Moyle talked to us boys concerning this wage increase, then he read off the proposed scale by the company and we took a vote on it, whether to accept it, and it passed.

Q. Were any truckdrivers present at this meeting?

A. As I recall, there were two or three truckdrivers.

Q. Did the proposed wage scale include the truckdrivers?

A. Not as I recall, no.

(Testimony of Delmar R. Peters.)

Q. You say that Mr. Gilbert Moyle was at this meeting? A. Yes.

Q. Did he say anything about the truckdrivers? [255]

A. As I recall, he told the truckdrivers that the company would take care of them later.

Q. Did I understand you to testify that there was a vote taken at this meeting? A. Yes, sir.

Q. What was that vote?

A. It was a majority. I don't remember the exact majority, but it was a clear cut majority.

Q. To accept this proposal?

A. To accept this proposal, yes, sir.

Q. Was anything said about drawing up an agreement?

A. Mr. Gilbert Moyle wanted to know if we would sign an agreement for a year at those wages.

Q. Solely on behalf of persons working in the plant proper? A. Yes, sir.

Q. Did he say any agreement was to be signed by the Association?

A. Well, it would have to be signed by the members of the—by the officers of the Association to make it binding on their behalf.

Q. Did you participate in the drawing up of an agreement following this meeting of the membership?

A. Well, the secretary and treasurer at that time—

Q. Who was secretary and treasurer at that time?

(Testimony of Delmar R. Peters.)

A. Earl Porter contacted Ben Peterson. [256]

Q. Who is Ben Peterson?

A. He is an attorney in town—to draw up a working agreement. We gave him what we wanted in this agreement, and he drew it up for us.

Q. How long after this meeting of the membership did you see Mr. Peterson?

A. Oh, I don't exactly recall. It was a few days.

Q. How long was it before he drew up the agreement?

A. Well, after we contacted him, he drew it up within the next day or so.

Q. Did you present it to the company after that?

A. Yes, sir.

Q. Whom did you present it to?

A. We presented it to Mr. John Peterson.

Q. Who was Mr. John Peterson?

A. He was the treasurer, I believe, of the company at that time.

Q. Had you signed it at that time?

A. Yes, Mr. Porter and I had signed it.

Q. Did any representatives of the Company sign it?

A. Yes, it was signed by Mr. John Peterson and Mr. Gilbert Sheets.

Q. Was that right at the same time you presented it?

A. No, it wasn't signed at the same time.

Q. I show you Respondent's Exhibit 1 for iden-

(Testimony of Delmar R. Peters.)

tification and [257] ask you if this is the agreement which was signed? A. Yes.

Q. Is there anything said about truck drivers in that agreement?

Mr. Moyle: The agreement speaks for itself—I object to that.

Trial Examiner Riemer: Sustained.

Q. (Mr. Penfield, continuing): Are there any agreements between the company and the Association in existence covering truck drivers?

Mr. Moyle: That calls for a conclusion of the witness.

Trial Examiner Riemer: Overruled.

Mr. Moyle: Ask him if truck drivers are members of the Association.

The Witness: Truck drivers are members of the Association.

Q. (Mr. Penfield, continuing): Is there any agreement between the Company and the Association covering the wage scale of truck drivers, and truck mechanics?

Mr. Moyle: We submit that question is objectionable. It is calling for a legal conclusion as well as a conclusion of fact.

Trial Examiner Riemer: The objection is overruled. Read the question.

(Thereupon the last question was read aloud by the reporter, as hereinabove recorded.) [258]

A. None other than what appears on the 1942 wage agreement. I think that the truck drivers and mechanics appear on there.

(Testimony of Delmar R. Peters.)

Q. Well, in 1941, was there ever any agreement?

A. Not that I know of.

Q. In May of 1942, did you participate in any negotiations with respect to wage increases?

A. Yes.

Q. Will you tell us what your participation was?

A. As the role of president.

Q. Well, I understand that it was in that capacity, but will you describe to us just what negotiations took place?

A. I contacted personally every member of the Association with the exception of the truck drivers and mechanics concerning a new wage scale to be presented to the company, and through Mr. E. V. Smith, the superintendent, I arranged for a date for an appointment with Mr. Gilbert Moyle concerning this wage increase.

The grievance committee and myself met with Mr. Moyle at the appointed time.

Q. At what time was this meeting?

A. It was in the latter part of May of this year, 1942, and I don't remember the exact date.

Q. What did you request at this meeting?

A. The amount of raise?

Q. Yes. [259]

A. Well, it was 20 cents an hour raise—20 cents an hour.

Q. Who were the members of this committee?

A. Haskell Duncan and Devereaux—I don't know his first name—and Brown, who is a mechanic—I don't know his initials,—and myself.

(Testimony of Delmar R. Peters.)

Q. Did I understand you to say that you presented a wage scale to the management calling for an increase? A. Yes, sir.

Q. Did this increase include the truck drivers?

A. Yes, sir.

Q. What did Mr. Moyle say to you at that time?

A. He told us that he would have to take the matter up—take the matter under consideration and that he would meet with us again in a few days.

It was the latter part of that week, I believe.

Q. Did you meet with him again?

A. Yes, we did.

Q. About how many days later?

A. Oh, it was about four or five, something like that.

Trial Examiner Riemer: Is this Gilbert Moyle?

The Witness: Yes, Mr. Gilbert Moyle.

Q. (Mr. Penfield, continuing): What did he tell you on that occasion?

A. Well, he told us—he gave us the copy of the proposed scale by the company, and told us that under the circumstances [260] he believed that this was about the best that he could do at the present time.

Q. Did the scale that he gave you include truck drivers? A. No.

Q. It did not? A. No.

Q. Did he make any explanation why truckdrivers were left off? A. No, he didn't.

Q. Did you question him in regard to that?

A. No, we didn't.

(Testimony of Delmar R. Peters.)

Q. Did I understand you to testify that Mr. Brown is a truck mechanic? A. Yes.

Q. Was he present at this second meeting?

A. No, he wasn't.

Q. Was there any meeting of the Association members held subsequent to this second meeting with Mr. Moyle?

A. Yes, we called a meeting after that.

Q. Who called it? A. I did.

Q. You did, as president? A. Yes.

Q. When was this meeting held?

A. It was held a few days after the second meeting with Mr. Moyle, I believe, about three or four days—five days. [261]

Q. How many members were present?

A. I believe that there were only about 12.

Q. Was that a quorum?

A. No, 15 is a quorum.

Q. But no official action was taken at this meeting? A. No.

Q. Was there a meeting of the Board of Directors held subsequent to that? A. Yes.

Q. How soon afterwards?

A. Oh, it was right shortly after that—just a few days.

Q. A few days afterwards? A. Yes.

Q. Was any vote taken at this meeting?

A. Yes.

Q. What was the vote?

A. We voted to accept the proposed agreement.

(Testimony of Delmar R. Peters.)

Q. That is the scale that Mr. Moyle had given you at the second meeting? A. Yes.

Q. The one that did not include truck drivers?

A. Yes.

Q. Had this wage scale of the company's ever been posted? A. It had.

Q. Where was it posted? [262]

A. On the bulletin board in the change room.

Q. Did it meet with any objections from the truck drivers?

A. I didn't hear of anything, and they had plenty of time.

Q. The vote was to accept the scale as presented?

A. Yes.

Q. Did you discuss an agreement at this meeting of the Board of Directors? A. Yes.

Q. What was the discussion with respect to an agreement?

A. Well, we drew up another agreement.

Q. Did you have an attorney on this occasion?

A. No, our secretary-treasurer copied the previous agreement with the exception——

Q. Exactly?

A. No, not exactly. He left out one or two things, I don't know just what they were. I don't remember the exact words. He would have to tell you that.

Q. Did the Board of Directors vote to include in that agreement the wage scale that had been presented by the company? A. Yes.

(Testimony of Delmar R. Peters.)

Q. And that wage scale did not include truck drivers?

A. Now, I am not positive whether the truck drivers and the mechanics are mentioned in that.

Q. Well, I asked you if that wage scale that was given you by the company at the second meeting included truckdrivers and [263] you have already testified that it did not, is that correct?

A. Well, it did not include the raise, but the names of truckdrivers and mechanics was mentioned in this proposal——

Q. But there was no provision for any raise for them? A. No, there was no raise.

Trial Examiner Riemer: The hearing will recess at this time until 1:30.

Mr. Witness, please return at that time.

(Whereupon, at 12:30 p. m. a recess was taken until 1:30 p. m.) [264]

Afternoon Session

(Whereupon, at 1:30 p. m. the hearing was resumed, pursuant to the taking of noon recess, as follows:)

Trial Examiner Riemer: The hearing will be in order. Mr. Peters, resume the stand.

Q. (Mr. Penfield, continuing): Mr. Peters, how long after this meeting of the Board of Directors was the agreement drawn up?

(Testimony of Delmar R. Peters.)

A. Well, it was just a few days. I can't tell you the exact number of days. I think Mr. Carlson can.

Q. Who presented it to the company?

A. Mr. Carlson, I think.

Mr. McKay: Are you talking about 1941 or 1942?

Mr. Penfield: 1942. That was the subject I was on, I believe, before recess.

Q. (Mr. Penfield, continuing): I show you this agreement and ask you if that is the agreement that was presented to the company?

A. Yes, that is it.

Q. You have testified that it was agreed at this meeting of the Board of Directors that the form of the 1941 agreement should be followed?

A. Yes, with the exception of a few lines.

Q. What were those lines?

A. I don't know. I don't remember those lines.

[265]

Q. Did they concern anything about the truck drivers, or truck mechanics? A. No.

Q. This agreement includes a wage scale for truck drivers and truck mechanics, doesn't it?

A. Yes.

Q. Was it agreed at that meeting that a wage scale for truck drivers and mechanics should be included in this agreement?

A. Well, we copied the list of all the employees on that wage schedule.

Q. I will show you Respondent's Exhibit 1 for

(Testimony of Delmar R. Peters.)

identification and ask you if that contains a wage scale for the truck drivers?

A. No. That is the 1941 agreement.

Trial Examiner Riemer: I think that it was said that it was copied into the May 1942 agreement, the wage scale submitted to them by Mr. Moyle.

Mr. Penfield: Well, I understood him to testify that it was agreed that they would copy the 1941 agreement.

Q. (Mr. Penfield, continuing): Wasn't that your testimony?

A. I think I said with the exception of a paragraph or a few lines, I am not sure.

Q. I asked you if anything was said about the wage scale for the truck drivers and the truck mechanics?

A. In the 1942 agreement? [266]

Q. Yes. I asked you if any of those exceptions included the wage scale for truck drivers and truck mechanics.

A. Well, we didn't consider the truck drivers and the mechanics in this 1942 agreement, any special consideration—they were on the proposed wage scale for the company.

Q. They were on the proposed wage scale submitted by the company?

A. Yes, for 1942, and we copied that into the 1942 agreement.

Q. You copied the wage scale submitted by the company in 1942?

A. Yes, sir; in the 1942 agreement.

(Testimony of Delmar R. Peters.)

Q. Do I understand your testimony is that the wage scale furnished you by the company included a wage scale for truck drivers and truck mechanics?

A. Yes, it was on the proposed scale.

Q. Were they granted any increase?

A. Well, since that agreement was signed, I understand some men in the truck department, I don't know who, have been granted wage increases.

Q. Were they granted any increases in the wage scale that was furnished you by the company?

A. No, not in that scale.

Q. Has the Association taken any further action with respect to getting increases for the truck-drivers? A. No, we haven't. [267]

Q. And that agreement, as signed, included the wage scale they had formerly gotten in 1941—well, I will put it this way—did that include their existing wage scale with no increases?

A. Yes.

A. Mr. Penfield: May I go off the record?

Trial Examiner Riemer: Off the record.

(Discussion off the record)

Trial Examiner Riemer: On the record.

Mr. Moyle: The exhibit which heretofore has been marked for identification as Respondent's Exhibit 1, will be withdrawn by the respondent for the purpose of permitting the Board's attorneys to mark it as their exhibit and offer it in evidence.

Mr. Penfield: I will now offer as Board's Exhibit 8, the 1941 agreement.

(Testimony of Delmar R. Peters.)

Trial Examiner Riemer: I assume there is no objection.

Mr. Moyle: No.

Trial Examiner Riemer: It may be admitted, and marked in evidence as Board's Exhibit 8, which was formerly marked Respondent's Exhibit 1 and withdrawn at Mr. Moyle's request.

(Whereupon the document previously marked as Respondent's Exhibit 1 for identification was withdrawn, and re-marked as Board's Exhibit 8 for identification, and received in evidence as Board's Exhibit 8.)

BOARD'S EXHIBIT NO. 8

AGREEMENT

That for and in consideration of the premises and the mutual covenants and promises hereinafter set forth, The Idaho Refining Company Employees' Benefit and Labor Association, party of the first part, and The Idaho Refining Company, a corporation party of the second part, hereby agree as follows:

It appearing that the parties hereto are desirous of entering into an agreement by the terms of which a certain definite, designated wage scale for the employees of the party of the second part shall be fixed for the year ensuing, that is, from the 1st day of June, 1941, to the 31st day of May, 1942.

It also appearing that The Idaho Refining Company Employees' Benefit and Labor Association is

(Testimony of Delmar R. Peters.)

an organization of the employees of The Idaho Refining Company and that said organization is a duly organized association having a president and secretary, and that among the purposes of the organization is one to promote labor and employment programs and to negotiate and enter into agreements pertaining to employment and wage scales.

It further appearing that upon the 21st day of May, 1941, a general meeting of the members of the association herein referred to was held, pursuant to notice and a quorum of the members of said association was present. A resolution as to minimum wages was presented and passed by a vote of the members of the association present, which scale of wages is as hereinafter set out.

It is agreed by and between the parties hereto that the hourly wage scale which said parties to this agreement have agreed upon is as follows for the various types of employment:

Operators	1.05 per hour
First Helpers	.82 per hour
Treaters	.77 per hour
Boiler Fireman	.72 per hour
Pumpers	.72 per hour
Pipe Fitter	.70 per hour
Mechanic	.80 per hour
Welder	1.00 per hour
Warehouse	.66 per hour
Yardmen	.66 per hour
Instrument men	.90 per hour

(Testimony of Delmar R. Peters.)

That in addition to the specification set forth in the above wage scale, yardmen are to be paid and receive pay as follows:

First 6 months of employment	.55 per hour
Ensuing 12 months	.60 per hour
After 18 months herein referred to	.66 per hour

It further appearing that the Idaho Refining Company, a corporation, the employer, is willing to pay the scale for wages as hereinbefore set forth and does by this agreement agree to pay said scale for the year ensuing.

It is understood that in addition to the wage per hour as above set forth, each employee is entitled to and shall receive time and one-half for all overtime in which he is employed by the employer.

In Witness Whereof, the parties hereto have set their hands and seals the day and year first above written.

THE IDAHO REFINING COM-
PANY EMPLOYEES' BENE-
FIT AND LABOR ASSOCIA-
TION

By DELMAR R. PETERS
President

Attest:

EARL B. PORTER
Secretary

Party of the First Part

THE IDAHO REFINING COM-
PANY, a corporation

By GILBERT SHEETS
President

(Testimony of Delmar R. Peters.)

Attest:

F. L. COPENING, JR.

Secretary

Party of the Second Part

Mr. Penfield: I will now offer as Board's Exhibit No. 9, the [268] 1942 agreement between the Association and the Idaho Refining Company.

Trial Examiner Reimer: You have seen that Mr. Moyle?

Mr. Moyle: Yes, that is satisfactory.

Trial Examiner Riemer: It may be admitted and marked in evidence as Board's Exhibit 9.

(Whereupon the document hereinabove referred to was marked and admitted in evidence as Board's Exhibit 9.)

BOARD'S EXHIBIT NO. 9

AGREEMENT

That for and in consideration of the premises and the mutual covenants and promises hereinafter set forth, The Idaho Refining Company Employees' Benefit and Labor Association, party of the first part, and The Idaho Refining Company, a corporation party of the second part, hereby agree as follows:

It appearing that the parties hereto are desirous of entering into an agreement by the terms of which a certain definite, designated wage scale for the em-

(Testimony of Delmar R. Peters.)

ployees of the party of the second part shall be fixed for the period ending November 30, 1942, that is, from the 1st day of June, 1942, to the 30th day of November, 1942.

It also appearing that the Idaho Refining Company Employees' Benefit and Labor Association is an organization of the employees of The Idaho Refining Company and that said organization is a duly organized association having a president and secretary, and that among the purposes of the organization is one to promote labor and employment programs and to negotiate and enter into agreements pertaining to employment and wage scales.

It is further appearing that up the 15th day of May, 1942, a general meeting of the members of the association herein referred to was held, pursuant to notice and a quorum of the members of said association was present. A resolution as to minimum wages was presented and passed by a vote of the members of the association present, which scale of wages is as hereinafter set out.

It is agreed by and between the parties hereto that the hourly wage scale which said parties to this agreement have agreed upon is as follows for the various types of employment.

		91*
Loading Dock .....	.79 per hour	
Loading Dock Helper .....	.66 per hour	
Operators	1.15 per hour	1 05*
First Helper .....	.93 per hour	82*
Treators .....	.88 per hour	77*
Boiler Firemen .....	.79 per hour	72*
Instrument Man	1.10 per hour	90*

(Testimony of Delmar R. Peters.)

Welder	1.49 per hour	1 00*
Truck Men in Yard .....	.73 per hour	
Yardmen .....	.73 per hour	55-66*
Pipe Fitter .....	.92 per hour	70*
Machinist	1.10 per hour	
Machinist Helper .....	.73 per hour	
Truck Drivers .....	.60 per hour	
Mechanics .....	.75 per hour	80*
Grease Men .....	.55 per hour	

* Figures in pencil.

That in addition to the specification set forth in the above wage scale, yardmen are to be paid and receive pay as follows:

First 6 months of employment	.60 per hour
Ensuing 12 month	.66 per hour
After 18 months herein referred to	

It further appearing that the Idaho Refining Company, a corporation, the employer, is willing to pay the scale of wages as hereinbefore set forth and does by this agreement agree to pay said scale for the six months ensuing.

It is understood that in addition to the wage per hour as above set forth, each employee is entitled to and shall receive time and one-half for all over-time in which he is employed by the employer.

(Testimony of Delmar R. Peters.)

In Witness Whereof, the parties hereto have set their hands and seals the day and year first above written.

THE IDAHO REFINING COM-
PANY EMPLOYEE'S BENE-
FIT AND LABOR ASSOCIA-
TION

By DELMAR R. PETERS
President

Attest:

P. W. CARLSON
Secretary
Party of the First Part

THE IDAHO REFINING COM-
PANY, a corporation
By GILBERT D. MOYLE
G. Mgr.

Attest:

F. L. COPENING, JR.
Secretary
Party of the Second Part

Q. (Mr. Penfield, continuing) Are employees of the Covey Gas & Oil Company members of the Association?

A. They were at one time, but I don't know whether they are now or not.

Q. Are employees of the Idaho Gas & Oil Company members of the Association?

(Testimony of Delmar R. Peters.)

A. I don't know as to that. The secretary-treasurer can tell you that.

Mr. Penfield: I believe that is all I have of this witness.

Cross Examination

Q. (Mr. Moyle) Now, in all of your experiences since you became an employee of the respondent refinery, has anybody connected with the company ever suggested anything to you about belonging to or maintaining a company union in preference to an outside union?

A. No. [269]

Q. Do you know of anything which has transpired which has influenced you, or which has tended to influence you, or any other member of the Association to do other than as you pleased about labor relations?

A. No, it is left entirely up to us.

Q. Have you heard of any expression from anybody connected with the company as to whether they preferred you belong to one organization rather than another? A. No.

Q. And you have felt perfectly free to do as you pleased?

A. Yes.

Q. And these vending machines that you have in this building that you built were bought and purchased by the Association? A. Yes.

Q. The company contributed nothing towards them? A. No.

(Testimony of Delmar R. Peters.)

Q. And had no interest in them at all?

A. No.

Q. And that is true of the sale of any other commodities that you sold to members of your association?

A. Yes.

Q. Do you know now whether all of the employees of the refinery are members of your association?

A. I am not positive about that.

Q. The discount that has been given you on gasoline is a [270] discount that was allowed any employee of the refinery, was it not?

A. Well, since I have been there, it has been that way. I don't know anything about it prior,—

Q. About what happened before you came?

A. Yes.

Q. And you have never heard since you came to the refinery of any restrictions upon that discount to members of your Association?

A. No.

Q. Or that an employee had to be a member of the Association to get the discount?

A. No, I had never heard anything like that.

Q. So, as a matter of fact, you get that gasoline from the Covey Gas & Oil Company of Idaho, and they bill the refinery for it, isn't that correct?

A. Yes.

Q. Then your account with the refinery is charged with whatever you buy at the Covey Gas & Oil Company of Idaho stations?

(Testimony of Delmar R. Peters.)

A. Yes. [271]

Q. Now, you stated that you presented the petition in 1941 to Mr. Moyle through Mr. Miller, the superintendent, that was a method of presenting this petition that you selected of your own choice?

A. That's right.

Q. You had received no instructions from the company to go to Mr. Moyle through Mr. Miller?

A. No.

Q. But that was done by the Association simply as a matter [273] of convenience to you as its president?

A. That's right.

Q. The attorney that you retained, Mr. Ben Peterson, is a practicing lawyer here in Pocatello?

A. Yes.

Q. And you paid him for his services out of the funds of the Association?

A. Yes.

Q. I think that you stated you told him what you wanted in the agreement? A. Yes.

Q. And had him draw it up so it would give you what you wanted? A. Yes.

Q. And that was the agreement that you signed and gave to the company and the agreement which the company signed without modification?

A. Yes. [274]

P. W. CARLSON

was called as a witness by and on behalf of the Board, and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: Tell us your name, please?

The Witness: P. W. Carlson.

Trial Examiner Riemer: Where do you live?

The Witness: Out by the Kraft Cheese Company.

Trial Examiner Riemer: Is that in Pocatello?

The Witness: Well, I don't know whether it is in the city or not. It is out north.

Mr. Moyle: The Kraft Cheese Company is next door to the [282] refinery.

Direct Examination

Q. (Mr. Penfield) Are you an employee of the Idaho Refining Company?

A. I am.

Q. In what capacity? A. As clerk.

Q. When were you first employed?

A. September in 1941.

Q. What are your duties?

A. Well, in a bookkeeping nature. Working the yield report for one, keeping accounts receivable.

Q. Are you a member of the Idaho Refining Company Benefit & Labor Association?

A. Yes.

Q. When did you join?

A. Well, it was in October, right after I came to work.

(Testimony of P. W. Carlson.)

Q. When did you first attend a membership meeting?

A. Well, the first one was in—I think that the first one I attended was in January.

Q. Do you hold any office in the Association?

A. Secretary-treasurer.

Q. When were you elected?

A. I was elected at this meeting in 1942.

Q. The meeting in January, 1942? [283]

A. That's right.

Q. Which was the first one you attended?

A. That's right.

Q. Had you been informed in advance of the meeting that you might be nominated for secretary-treasurer?

A. Yes, I had.

Q. Who had informed you?

A. Well, there were two or three who had informed me. Earl Porter is one. He wanted to give his position up, so he informed me that he was going to ask me if I would accept the nomination if I became nominated, and of course, I said I would.

Q. Was there a nominating committee?

A. Yes.

Q. Who was on the nominating committee?

A. I think Spike Henninger was one.

Q. Is he the chairman?

A. I believe that he is.

Q. Who is Spike Henninger?

A. He is the dock foreman.

(Testimony of P. W. Carlson.)

Q. Who made the nomination at this meeting?

A. Who made the nomination?

Q. Yes.

A. I don't recall.

Q. Was it Henninger?

A. It could have been. [284]

Mr. Penfield: I now offer the by-laws of the Association [289] as accepted at a meeting of February 12, 1941.

Q. (Trial Examiner Riemer) Who turned the by-laws over to you, Mr. Carlson?

A. Mr. Porter

Q. Where is Mr. Porter now?

A. He is with the Idaho Refining Company in the office.

Q. At Pocatello?

A. Out at the refinery in Pocatello.

Q. Did he inform you that he was giving you all the records in his possession?

A. All that he had in his possession, yes.

Q. He didn't tell you that there were some records missing?

A. Well, only the minutes that he referred to.

Q. Did he say anything about the by-laws?

A. No, sir.

Q. You have never seen the original of the by-laws?

A. No, if they are not the originals, I haven't seen them.

Mr. Penfield: I offer this in evidence.

(Testimony of P. W. Carlson.)

Trial Examiner Riemer: The Board offers the Association by-laws. Is there any objection?

Mr. Moyle: No.

Trial Examiner Riemer: They may be admitted, and so marked.

(Whereupon the document heretofore marked as Board's Exhibit 12 for identification was received in evidence.) [290]

BOARD'S EXHIBIT NO. 12

(Copy)

[Pencil note]: file 19-C-107

BY-LAWS

Article I

Election of Officers

Section I. Election of officers shall be once each year, said election to be held during the month of February, and their term of office shall be for twelve months. An officer may succeed himself only once with the exception of the Secretary-Treasurer.

Section 2. The following officers and committees are to be elected in the order named:

President

Vice-President

Secretary-Treasurer

Grievance Committee Three members

Safety Committee Two members

Social & Welfare Committee Three members

Auditing Committee Two members

(Testimony of P. W. Carlson.)

Board's Exhibit No. 12—(Continued)

Section 3. The nominee receiving a plurality of the votes cast to be declared elected. Immediately after the election of each committee the names of the members shall be voted upon by the entire membership present to determine who shall serve as chairman.

Section 4. In case of resignation, or removal or termination of employment with the Idaho Refining Company or subsidiary, of an elected officer or committeeman, the vacancy shall be filled by the President and such appointee shall hold office until the next regular election.

Article II.

Duties of Officers, etc.

Section 1. The President, Vice-President, and Secretary-Treasurer, together with the chairman of the Grievance Committee, the Safety Committee, the Social and Welfare Committee, and the Auditing Committee shall constitute a Board of Directors to transact the business of this Association.

Section 2. It shall be the duty of the President, or in his absence, then the Vice-President, to preside at all meetings of the Association and the Board of Directors.

It shall be the duty of the President, or in his absence, the Vice-President, to call all meetings of the Board of Directors and the Association.

Section 3. The Secretary-Treasurer shall record

(Testimony of P. W. Carlson.)

Board's Exhibit No. 12—(Continued)

the proceedings of all meetings of the Association and the Board of Directors. In event of his absence, then the President or presiding officer shall appoint an acting secretary to record the proceedings of such meetings.

The Secretary-Treasurer shall receive all funds due the Association and keep the same in careful account in a depository approved by the Board of Directors.

He shall also pay all bills against the Association only after they have been approved by the Board of Directors at a regular or special meeting. All checks to be made out and signed by the Secretary-Treasurer and countersigned by the President or Vice President.

He shall receive, answer and file all communications of the Association and keep copies of same in a file provided for such purpose.

His accounts shall be balanced and audited by the Auditing Committee every three months.

He shall give a financial report at each regular monthly meeting of the Board of Directors.

At the expiration of his term of office, he shall turn over to his successor all books, papers, files, money and office supplies of the Association.

Section 4. It shall be the duty of the Grievance Committee to receive all grievances of the members, these grievances to be in writing, and consider them. If deemed advisable, the committee will confer with

(Testimony of P. W. Carlson.)

Board's Exhibit No. 12—(Continued)

the Company management and report its findings to the affected party or parties, or the Board of Directors or the membership as a whole if this is considered expedient.

Section 5. It shall be the duty of the Safety Committee to receive all suggestions and ideas from the members for promoting safety measures and

In connection with less hazardous working conditions ~~at~~/the Refinery, and its Subsidiaries and after due consideration, if necessary, confer with the Company management concerning their findings.

Section 6. The Social and Welfare Committee shall call upon any and all members who are absent from work because of illness or injury, not later than two days after the beginning of such absence.

This committee shall be the host at all parties and social functions of the Association, and may appoint any members it deems necessary to assist it at any social function.

Section 7. The Auditing Committee shall audit the accounts of the Secretary-Treasurer every three months and post a summary of their audit on the Refinery bulletin board.

Article III

Salaries of Officers

Section 1. The Secretary-Treasurer shall be compensated for his services at the rate of five dollars

(Testimony of P. W. Carlson.)

Board's Exhibit No. 12—(Continued)

(\$5.00) per month provided that his books and accounts are in order and posted for the month preceeding each regular meeting of the Board of Directors: This salary to be paid from the undivided profits of the business conducted under the Social-Welfare activities.

Article IV

Bonds of Officers

Section 1. No bonds shall be required of any officer or Director except the Secretary-Treasurer and he shall give a bond through a reputable bonding company in an amount satisfactory to the Board of Directors and said bond shall be valid when accepted and approved by the Board of Directors. The Association shall pay the premium for this bond from its Benefit Funds.

Article V

Qualifications of Officers

Section 1. Any member of this Association shall be eligible to any office after he has been a member in good standing for six (6) months prior to such election or appointment and otherwise qualifies under the Articles and By-Laws of the Association.

Section 2. No member shall be eligible to hold office to exceed two (2) years in succession except the Secretary-Treasurer.

(Testimony of P. W. Carlson.)

Board's Exhibit No. 12—(Continued)

Article VI

Meetings

Section 1. The Board of Directors shall meet not later than the tenth day of each month to transact the regular business of the Association. Five (5) members of the Board of Directors present at any regular or special meeting shall constitute a quorum for the transaction of business.

Section 2. An announcement of each regular monthly meeting of the Board of Directors shall be placed on the Refinery Bulletin Board at least two days prior to such meeting. All members of this Association are welcome to attend the Board meetings to enter into a general discussion of the business at hand.

Section 3. A Committee chairman who is unable to attend a Board meeting shall appoint a member of his committee to be present, said appointee shall have full voting power.

Section 4. Bills and claims against the Association may be presented at any regular or special meeting of the Board of Directors.

Section 5. A general meeting of the members of the Association may be called at any time by the Board of Directors or a petition requesting it, signed by fifteen (15) of the members and presented to the Board of Directors.

Section 6. At a general meeting of the Association fifteen (15) members shall constitute a quorum for the transaction of business.

(Testimony of P. W. Carlson.)

Board's Exhibit No. 12—(Continued)

Section 7. An officer of this Association can be recalled by a petition demanding his removal signed by two-thirds of the total membership presented at a general meeting of the association.

Article VII

Qualification for Membership

Section 1. All employees regularly listed on the payroll of the Idaho Refining Company and its subsidiary companies are eligible to membership in the Association.

Section 2. Any employee wishing to join must present to the Secretary an application properly filled. This application will be voted on by the Board of Directors at a regular or special meeting. A majority vote will confer membership on the applicant.

Article VIII

Termination and Expulsion

Section 1. Termination of employment from the Idaho Refining Company or its subsidiaries, voluntarily or otherwise, shall terminate membership; but the discharge of any member from the employment during disability or sickness shall not deprive such member of any benefits to which he may be entitled at that time.

Article IX

Dues

Section 1. Dues for a new member shall be one dollar (\$1.00) per month for three months, after this his dues shall be fifty (50) cents per month.

(Testimony of P. W. Carlson.)

Board's Exhibit No. 12—(Continued)

Section 2. Dues for old members shall be fifty (50) cents per month. All dues shall be deducted from the member's pay check once each month.

Section 3. All dues of this Association are to be kept in a special account known as a benefit fund. This fund shall be used only for the payment of benefits except as otherwise provided for in these By-Laws.

Section 4. The Idaho Refining Company shall pay to the Secretary once each month the total amount of dues collected from the members.

Article X

Benefits

Section 1. The monetary benefits to be obtained by a member of this Association shall be as follows:

(a) If a member in good standing becomes disabled for work by sickness or personal injury, he shall receive nothing for the first three (3) days of disability, but if such disability continues beyond three (3) days, he shall receive, beginning on the fourth day, benefits at the rate of Twenty-one Dollars (\$21.00) per week or fraction thereof during which the disability continues, up to a maximum of six (6) weeks.

(b) Should such sickness or disability continue beyond six (6) weeks, and the member has received full benefits which would accrue to him, he shall receive as an additional benefit the privilege of being carried on the roll as an active paid-up member and

(Testimony of P. W. Carlson.)

Board's Exhibit No. 12—(Continued)

be exempt from the payment of dues until he returns to work or at such prior time as the disability shall have been removed to the satisfaction of a reputable physician selected by the Board of Directors.

(c) In cases covered by Workmen's Compensation Laws of the State in which the member may be employed, this association pays nothing.

Section 2. (a) Hospital benefits to the amount of five dollars (\$5.00) per day shall be allowed to any member in good standing who is confined to a hospital by sickness or disability.

(b) Hospital benefits shall not be paid on cases covered by Workmen's Compensation Laws of the State in which the member is employed.

(c) No sick or hospital benefits shall be paid on cases of pregnancy of a married woman who may be a member of this association.

(d) No sick benefits or hospital benefits shall be allowed under this Article when such sickness or disability is caused by immoral conduct of the member or conduct unbecoming a gentleman or of any offense against the Laws of the State in which the member is employed. In the case of any protest or controversy of the above, the Board of Directors will make a ruling.

(e) No member shall receive more than seventy dollars (\$70.00) in hospital benefits in any one calendar year.

(Testimony of P. W. Carlson.)

Board's Exhibit No. 12—(Continued)

Section 3. If a member in good standing dies, in cases not covered by the Workmen's Compensation Laws of the State in which the member is employed, his beneficiary shall be paid seventy-five dollars (\$75.00). The Secretary-Treasurer shall keep on file the designated beneficiary of each member of the Association.

Section 4. In case of contagious diseases, where the home is quarantined, a member remaining at home on account of the disease, must when applying for the benefits, have a signed statement from the health officer stating the exact period of time said member had to be absent from duty on account of quarantine.

(a) Quarantine benefits to the same amount as sick benefits will be paid starting on the fourth day of quarantine in cases only where the member is not allowed to work.

(b) The member quarantined must conform to the By-Laws the same as in sickness. A member who will entertain friends or visitors at their home while the house is under quarantine, shall upon the case being established against them to the satisfaction of the Board of Directors, forfeit all quarantine benefits entitled to them at that time.

Section 5. (a) If a member of this association in good standing, becomes sick or injured, he shall notify the Secretary of this Association within four (4) days from the first day of sickness or disability. Failing to give such notice, he shall forfeit all claims

(Testimony of P. W. Carlson.)

Board's Exhibit No. 12—(Continued)

until such time as the Secretary be notified. He shall also present to the Secretary if required a certificate furnished by the Association, filled in and signed by a licensed physician, setting forth his claim for the benefit and which upon approval by the Board of Directors shall constitute authority for the Board to allow the member all the benefits due him under the By-Laws.

(b) The Board of Directors, at the time deemed necessary shall have the power to employ a special physician to examine sick or disabled members; the findings of said physician shall be the basis for compensation. The physician so employed shall be paid out of the benefit funds of the Association.

Article XI

Payment of Bills

Section 1. All sums approved by the Board of Directors payable by this Association shall be payable by check, signed by the Secretary-Treasurer and countersigned by the President or Vice-President, and made payable to the person or firm to which money is due.

The following employees of this Association were present when these By-Laws were accepted at a meeting held Wednesday, February 12, 1941.

(Testimony of P. W. Carlson.)

Q. You testified that you began as secretary-treasurer in February? A. That is right.

Q. So the records prior to the time that you became secretary-treasurer would have been prepared by somebody else? A. Yes.

Q. But they were part of the records that were turned over to you? A. That's right. [292]

Q. What was the first one of these that you prepared?

Mr. Moyle: Is this still Exhibit 13?

Mr. Penfield: Yes.

A. The first one I prepared was from the period February 16 to and including February 28.

Q. Did you receive instructions from Mr. Porter as to the method of preparing these records?

A. Yes, I did.

Q. Have you since prepared the records in accordance with those instructions?

A. Yes, I have.

Q. What is the procedure in which these records are prepared, and what do they show?

A. Well, on the 15th of the month they show the dues, which is 50 cents per month per member, and that is for the members that have been a member for three months, and the first three months, they are charged a dollar a month, and the cokes, the charges for cokes are taken from the records out in the boiler house.

Q. What records in the boiler house?

A. Well, we have a ledger out there, and whenever anyone wants to get some cokes or cigarettes,

(Testimony of P. W. Carlson.)

why their name is put down and the charge made to them. If they wanted three cokes,—15c,—and didn't have the money, their name is put down and they are charged 15 cents. [293]

Q. Do they sign a slip?

A. Not necessarily.

Q. Is there someone who gives them the money when they want money for a coke?

A. Well, we have a cash box out there.

Q. Who has custody of that?

A. The boilerhouse fireman has custody of that cash box.

Q. Who gives him the money?

A. Well, that is received from the selector. When he runs low on nickels, he goes over to the selector and empties it out and makes a record of the cash received, and that way he is reimbursed until he gets to such a status that he is out of funds, then I generally have a fund there in the office for that purpose.

Q. And you give him money on occasions, do you? A. Yes.

Q. Then, do I understand you, that the employees in some instances put nickels into these machines—— A. Yes.

Q. To get the cokes? A. Yes.

Q. Is the same true for cigarettes?

A. Yes.

Q. You have a machine for cigarettes, too?

A. No, it isn't a machine. It is in the form of a cabinet and [294] it has a padlock on it, and of

(Testimony of P. W. Carlson.)

course, when they want cigarettes, why that is opened and they either pay cash or it is charged.

Q. Does the boiler room fireman have custody of that—the key to that? A. Yes.

Q. So in some instances, they will pay cash, and in other instances, they will draw the cash, is that right? A. Yes.

Q. Does the boilerhouse fireman turn over these slips to you? A. Yes, he does.

Q. Are they in the form of slips, or a list?

A. Well, they are a list of them. For instance, the fireman might be on there for a period and the charges that are made on his run are just tabulated right in a line or in a list, and that of course, is checked. His charges are checked against his change when the next fireman comes on.

Q. And then he turns over to you the cash and the amounts that have been advanced with the names of the employees to whom they have been advanced?

A. Well, I pick up the charges twice a month.

Q. You pick them up from him? A. Yes.

Q. Do you pick up the cash from the machine, too?

A. No, he takes care of that, although at the end of the month [295] I pick up the cash and leave him five dollars.

Q. With respect to these charges you pick up, what do you do with them?

A. Well, they are totalled up and tabulated on this list twice a month.

Mr. Moyle: That is Exhibit 13.

(Testimony of P. W. Carlson.)

Q. (Mr. Penfield, continuing): How do you get up the list? I notice in this one corner you have a list of names. Where do you get that list of names?

A. I generally take it right from the payroll, due to the fact that it is more convenient for the payroll clerk to have them in alphabetical order or the way she has them in the payroll books.

Q. You take a list of the entire payroll of the company? A. Yes, sir.

Q. Then what do you do with these charges when you get them? You have one for cigarettes and one for cokes,—you pick them both up from the boiler room fireman?

A. Yes, I total them up, and whatever their charges are for the 15-day period. If it is cigarettes—here is one, cigarettes, cokes, laundry, that is all figured here, and their dues, and then I make a total of the entire deductions there.

Q. And you put that by the employee's name—the particular employee's name for whom you have a charge slip, is that right?

A. That's right. [296]

Q. So some of them may not have any charges, and some of them will? A. That is true.

Q. Who gets the profits from the sale of cigarettes and cokes and other soft drinks?

A. The Association.

Q. Do they own the machine? A. Yes.

Q. Does the Association have a laundry concession?

(Testimony of P. W. Carlson.)

A. Well, I don't know whether you would call it a concession or not, but we have the laundryman pick up laundry there, and of course, the Association gets a discount from the total amount of the laundry during the month.

Q. Whose laundry do they pick up?

A. They pick up laundry from the employees.

Q. The employees of the Idaho Refining Company? A. Yes.

Q. Do they pick up this laundry out at the plant?

A. Yes.

Q. And deliver it out there, also? A. Yes.

Trial Examiner Riemer: Is that a family laundry, or just—

A. Well, it is mostly—they send their greasy overalls and coveralls.

Trial Examiner Riemer: Their work clothes?

[297]

The Witness: Yes.

Q. (Mr. Penfield, continuing): Could they send their family clothes, also?

A. To my knowledge, they can.

Q. Do they ever, to your knowledge?

A. Well, I couldn't say "yes" or "no" on it. It seems to me that one or two of them have; that can be picked up and the charges run through their payroll.

Q. You mean that they would pick them up at the employees' homes? A. That's right.

Q. Then how are these charges submitted?

(Testimony of P. W. Carlson.)

A. Well, twice a month, the National Laundry presents a bill, giving the list of all employees who have had any laundry during this period. They list their names and amounts due, and that of course, is run on this list as a payroll deduction.

Q. As I understand it, they submit you an itemized list of the work done during that particular two weeks' period?

A. Yes, for the employees.

Q. With the amounts beside it, and what do you do with those amounts?

A. Well, those amounts on the bill are tabulated on this sheet opposite their names in the column headed,——

Q. In the column headed "Laundry"?

A. Laundry. [298]

Q. What do you have in this column headed "Total"?

A. That is the total of it. That is cigarettes, cokes, and laundry, for each individual member and employee.

Q. And you say you make this up twice a month?

A. Yes, sir.

Q. Do the sheets that you make up on the first have any item for dues? A. No.

Q. Do the sheets that you make up on the 15th?

A. Yes.

Q. Otherwise, they are the same?

A. That's right.

(Testimony of P. W. Carlson.)

Q. Then you tabulate the amounts for each individual due you?

A. Yes.

Q. What do you do with them then?

A. Then this record is turned over to the payroll clerk.

Q. What does the payroll clerk do?

A. Well, she just makes these charges on the payroll sheet with the total deductions there that I have listed on here.

Q. And then on the basis of those sheets, are those amounts deducted from the employees' salaries?

A. Yes.

Q. On what days of the month do you turn over these sheets to the payroll clerk?

A. Generally on the 16th or the day following the 15th, in the [299] middle of the month, and also the last day of the month, which would be the first of the succeeding month.

Q. Then do you receive money from the payroll clerk?

A. Yes, she gives me a check for the total of all deductions she makes.

Q. The total amount of all those deductions?

A. Yes.

Q. And what do you use that money for?

A. Well, we use that money to pay the laundry bill, pay the bottling companies, and cigarette companies here that furnishes us with things here that we use out there.

(Testimony of P. W. Carlson.)

Q. There is a profit from the laundry and the cigarette and the coke machines, is there?

A. Yes.

Q. Then will there normally be a surplus each time after you have paid off these bills?

A. Yes.

Q. And what is done with that?

A. That surplus is run into the Welfare Fund.

Q. What is the Welfare Fund?

A. The Welfare Fund is used for—well, to create better feeling among the employees through putting on recreational activities.

Q. Does it have any specific uses or is it a question for the employees to vote on? [300]

A. It is a question for the employees to vote on, what they want to do with the surplus.

Q. All the profits that you make go into that fund?

A. Yes.

Q. What do you do with the dues?

A. All the amounts that are collected from dues are run into the Benefit Fund.

Q. What is the Benefit Fund used for?

A. The Benefit Fund is used for to pay benefits to employees that have been laid off due to sicknesses or in case of death, they receive some death benefits,—their beneficiaries receive them.

Q. What are the benefits which are paid? What will the workers receive in case of sickness, or in case of death?

A. In case of sickness where they are not in the

(Testimony of P. W. Carlson.)

hospital, they get \$3 a day after a waiting period of 3 days up to a maximum of \$49, and if they are in the hospital due to sickness or accident or illness, they get \$3.50 per day after the first—well, that starts right from the beginning; they don't have any waiting period on that. [301]

Q. (Mr. Penfield): You testified that on the 15th, the deductions are made for dues, and would this list of July 1 to July 15 show all of the employees who are members of the Idaho Refining Company Employees Benefit & Labor Association?

A. Yes.

Q. Could you also ascertain whether there were any employees, or what employees, were not members of the Association?

A. Yes.

Q. And how could you ascertain that?

A. Well, if they are not a member of the Association on the line opposite their dues, there isn't any amount put in there. It is just left blank. No dues are charged.

Q. So that in each instance where dues had been charged, that would indicate that that particular person is a member of the Association?

A. Yes.

Q. I call your attention to Board's Exhibit 13 for identifica- [302] tion the first few pages, and ask you if those pages show that employees of the Western Gateway Storage are members of the Association?

A. Yes, they are.

(Testimony of P. W. Carlson.)

Q. Is one of those employees C. E. Henninger?

A. Yes.

Q. Who is Mr. Henninger?

A. He is the dock foreman.

Q. Do these records also show that employees of the Idaho Gas & Oil Company are members of the Association?

A. Yes.

Q. Do they also show that employees of the Covey Gas & Oil Company are members of the Association?

A. Yes.

Q. On page 2 of Board's Exhibit 13 for identification, there is also a list of employees. Does this list show whether or not Kermit Rice is a member of the Association?

A. Yes, it does.

Trial Examiner Riemer: What is the date of that?

Mr. Penfield: This is July 1 to July 15, 1942. This should be marked for identification as Board's Exhibit next in order.

(Whereupon the documents hereinabove referred to were marked as Board's Exhibit 14A, 14B and 14C for identification.) [303]

Q. (Mr. Penfield, continuing) Who is Mr. Kermit Rice?

A. Why, he is the head of the garage out there. I don't know what his official title is.

Q. Does this list show Mr. E. V. Smith is a members of the Association? A. Yes.

(Testimony of P. W. Carlson.)

Q. Who is Mr. E. V. Smith?

A. He is now the plant superintendent.

Q. Does it show that Mr. W. A. Sheppard is a member of the Association?

Mr. Moyle: I think that the record itself would show as the best evidence. He has explained the manner in which it can be determined from the list itself.

Trial Examiner Riemer: Off the record.

(Discussion off the record)

Trial Examiner Riemer: On the record. For the purpose of expediting the proceedings, the Examiner declares a ten-minute recess so counsel can look over some documents of the Association.

(Whereupon, at this time a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Riemer: On the record.

Q. (Mr. Penfield) Does it show that Mr. H. B. Sheets is a member of the Association?

Trial Examiner Riemer: Let the witness answer the previous [304] question about Sheppard.

The Witness: He is not a member, no.

Q. (Mr. Penfield, continuing) Who is H. B. Sheets?

A. He is an employee out at the refinery. I don't know what his official capacity is there.

Q. Does the record show him as a member?

A. Yes.

(Testimony of P. W. Carlson.)

Q. Who is A. V. Simpson?

Trial Examiner Riemer: There is no point in asking "Who is H. B. Sheets". Is he a member of the Association?

Mr. Penfield: I asked him and he couldn't identify him. We will have to identify him somewhere else.

Q. (Mr. Penfield, continuing) Who is A. V. Simpson, if you know?

A. Yes, I know who he is. He is some foreman out there at the plant.

Q. Who is B. J. Albertson?

A. He is now the treasurer of the Idaho Refining Company.

Q. Was he treasurer during this period?

A. Yes.

Q. Does your record show that he was a member?

A. Yes.

Q. Who is F. L. Farnsworth?

A. He is a chemist.

Q. Does this sheet show that he was a member?

[305]

A. Yes.

Trial Examiner Riemer: Excuse me, Mr. Penfield. Before you go any further, you are examining the witness on the period of July 1 to July 15, 1942, which is Board's Exhibit 14A, B and C.

Mr. Penfield: Yes, I thought of introducing them together. Perhaps I should introduce them now.

(Testimony of P. W. Carlson.)

Trial Examiner Riemer: I wish that you would.

Mr. Merrill: We object to the introduction on the ground that they are wholly immaterial for any purpose because they contain information or names of individuals at a date long after the alleged happening of anything in the complaint, and even after the filing of the complaint.

Trial Examiner Riemer: I will reserve my ruling for the time being on Board's Exhibit 14A, B and C for identification.

Mr. Penfield: I offer this as Board's Exhibit next in order.

Trial Examiner Riemer: What are you offering?

Mr. Penfield: I am offering this list entitled "Idaho Refining Company Employees Benefit & Labor Association Payroll Deductions July 1 to July 15, 1942".

Trial Examiner Riemer: That is Board's Exhibit 14. I have reserved ruling on that for the time being.

Mr. Penfield: I would like to have this marked for identification.

(Whereupon the document hereinabove [306] referred to was marked as Board's Exhibit 15A, B and C for identification.)

Q. (Mr. Penfield.) I show you what has been marked for identification as Board's Exhibit 15A, B and C and ask you what it is.

A. It is a list of employees with their payroll

(Testimony of P. W. Carlson.)

deductions for the period of October 1 to October 15, 1941.

Q. And is that list prepared in a similar fashion to Board's Exhibit 14?

A. By all indications, it is.

Q. Is that a list from the official records of the Association which were in your custody?

A. Yes.

Q. Does this list differ in any way from the other list?

A. There might have been—

Mr. Moyle: The list speaks for itself.

Mr. Penfield: I want the record to show on this list that there was a column headed "candy" and there was no such column on the other list.

Mr. Moyle: Is that important?

Mr. Penfield: It isn't a question of whether or not it is important. I want the record to be clear.

Q. (Mr. Penfield, continuing) How does it happen that there is an item "candy" on this one, and not on Board's 14 for identification? [307]

Mr. Merrill: We object to that on the ground that it would be a pure conclusion of the witness. He has already testified that he didn't become associated with this office until February, 1942 and this has to do with 1941.

Trial Examiner Riemer: Sustained.

Q. (Mr. Penfield, continuing) Does the name F. L. Copenig appear on this list?

A. Yes.

Q. Who is Mr. Copenig?

(Testimony of P. W. Carlson.)

A. At the time of this report—I wouldn't say at the time of this report, either,—but when I first became employed he was the secretary of the Idaho Refining Company. He is now in the Army.

Q. Does this list show that he is a member?

A. He was a member at that time, according to that.

Q. Who is G. L. Farnsworth?

Trial Examiner Riemer: Isn't that F. L. Farnsworth?

Mr. Penfield: It is either a G or a C, on here.

A. He is a chemist.

Q. Does this list show Kermit Rice was a member? A. Yes.

Q. Does it show that A. V. Simpson was a member?

Mr. Merrill: We object to the form of that question on the ground that it calls for a conclusion of the witness. The most that the witness can say is to read the list which has [308] been offered in evidence, and that the name appears thereon.

Trial Examiner Riemer: Sustained. Does it show a deduction for Association dues, put it that way.

Mr. Penfield: I think, Mr. Examiner, that my chief purpose in naming these persons at this time was merely to show their position, and in view of the fact that in many instances they are the same as with respect to Board's Exhibit 14 for identification, there is no point in going through this.

(Testimony of P. W. Carlson.)

Trial Examiner Riemer: All right.

Q. (Mr. Penfield, continuing) Does this list show that employees of the Western Gateway Storage were members of the Association?

A. Yes.

Q. Does it show that the employees of the Idaho Gas & Oil Company were members of the Association?

A. Yes.

Q. Does it show that employees of Covey Gas & Oil Company were members of the Association?

A. Yes.

Mr. Penfield: I offer this in evidence as Board's Exhibit 15.

Trial Examiner Riemer: Has the respondent a position with respect to this?

Mr. Moyle. We have no objection.

Trial Examiner Riemer: With respect to Board's Exhibit 14, [309] are you renewing your objection to that?

Mr. Moyle: Yes, your Honor.

Trial Examiner Riemer: May I see the pleadings, please?

The objection to Board's Exhibit 14 is sustained. Board's Exhibit 15 may be admitted in evidence.

Mr. Penfield: Mr. Examiner, I submit that that is properly——

Mr. Moyle: May I interrupt to inquire if it is permissible to argue with the Examiner's rulings after the ruling?

Trial Examiner Riemer: It just depends on the

(Testimony of P. W. Carlson.)

decision of the Examiner. Sometimes attorneys don't like the rulings. It is perfectly apparent why I ruled as I have. The complaint is dated June 24, and the proposed exhibit is dated July 1. I think that we can go on now with the hearing.

Mr. Penfield: I would like to have this document marked for identification.

(Whereupon the document hereinabove referred to was marked as Board's Exhibit 16A, B and C for identification.)

(Whereupon the document heretofore marked Board's Exhibit 14 ABC for identification was refused.)

(Whereupon the document heretofore marked Board's Exhibit 15A, B and C for identification was received in evidence.)

BOARD'S EXHIBIT No. 15-A

IDAHO REFINING COMPANY

EMPLOYEES BENEFIT AND LABOR ASSOC.

PAYROLL DEDUCTIONS

Period of Oct. 1 to Oct. 15, 1941

	Dues	Candy	Cokes	Laundry	Total
Anderson, John	.50		1.55		2.05
Archibald, Leo	.50				.50
Ayres, James	.50			.25	.75
Brower, K. C.	.50				.50
Baldwin, V. A.	.50		.70		1.20
Bailey, Harold	.50	4.50	.70		5.10
Burkholder, Pat	.50		.25		.17
Berrett, Reed	.50				.50

(Testimony of P. W. Carlson.)

Payroll Deductions—Period of Oct. 1 to Oct. 15, 1941—(Cont'd)

	Dues	Candy	Cokes	Laundry	Total
Brown, E. K.	.50			.80	1.30
Campbell, Guy	1.00				1.00
Christman, C. R.	.50			.90	1.40
Chambers, Reynold B.	-0-				-0-
Campbell, W. D.	.50		.25	1.00	1.75
Cornia, Boyd	.50				.50
Copening, F. L.	.50		.30		.80
Davis, Howard	1.00				1.00
Dern, Fred	.50		1.00	1.40	2.90
Devereaux, U.	.50		.10	.40	1.00
Dixon, Gwen	1.00	.10			1.10
Downey, James	.50				*.50
Duncan, Haskell	.50			.50	1.00
Ebersole, Earl	-0-				-0-
Ellingford, Victor	.50			.25	.75
Evans, John	.50				.50
Farnsworth, G. L.	.50				.50
Fowler, Leonard	.50		.45		.95
Greserson, Chris R.	1.00				1.00
Grimmett, Ed	.50				.50
Hammond, Jerry	-0-				-0-
Hancock, Elijah	.50			.17	1.25
Hanson, Clarence	.50	.10	1.00	.40	2.00
Heckert, Arthur	.50				.50
Hendricksen, H. H.	.50		.80	1.50	2.80
Hill, Carl	.50				.50
Holder, Vaughn	.50				.50
Horrell, Dana W.	.50			1.87	*2.37
Jackson, Laron	.50		.30		.80
McIntier, Morgan	-0-				-0-
McMillan, Al	1.00				*1.00
McMillan, Wm.	.50				.50
Merrill, Stanley	.50		.85	3.05	4.40
Mick, A. H.	.50		.30		.80
Miller, A. H.	.50				.50
	24.00	4.70	8.55	11.20	1.87 48.32

* Figures in circle.

(Testimony of P. W. Carlson.)

BOARD'S EXHIBIT No. 15-B

	22.00				
	Dues	Candy	Cokes	Laundry	Total
Miller, R. E.	.50				.50
Miller, W. M.	.50	.15	.70		1.35
Mills, Kay	.50		.20	.50	1.20
Miner, S. R.	.50		2.85	1.65	5.00
Moyle, Bob	.50		1.55		2.05
Norton, Wilmer	.50	.20	1.55	.50	2.75
Patterson, Bob	.50				.50
Pearson, Vess	.50	.30	1.60		2.40
Peters, Delmar	.50	.05	.65	.60	1.80
Peterson, John H.	.50		.35		.85
Pope, Max	.50		.55		1.05
Primbs, Valerie	.50	.10			.60
Parker, N. W.	.50		1.85	.35	2.70
Ray, John	1.00				1.00
Rice, Kermit	.50				.50
Rogers, Marlaine	-0-				-0-
Sequine, Harley	.50				*.50
Sherman, Francis	.50		1.00	.90	2.40
Shreve, A. R.	.50			1.85	2.35
Simpson, A. V.	.50		1.40	.75	2.65
Smith, E. V.	.50		1.50	.80	2.80
Sorenson, Allen	-0-				-0-
Sorenson, Rupert	.50		.90	.50	1.90
Stanger, P. P.	.50			.40	.90
Stewart, Cleone	1.00		.10		1.10
Smith, P. G.	.50	.40	.20		1.10
Wagstaff, Radford	.50	.20			.70
Wells, Norman	1.00		.60	.80	2.40
Whitesides, M. D.	.50			4.50	5.00
Williams, Waldon	.50	.25	3.65	2.25	6.65
Wright, Harold	.50		.60	.70	1.80
Yancey, Edythe	-0-				-0-
P. W. Carlson	1.00	.10			1.10
Wayne Douglas	.50		.15		*.65
Oran Thomas	1.00		.70		1.70
Wayne Nord	1.00		.75	.80	2.25
Martha White		.10			.10

* Figures in circle.

(Testimony of P. W. Carlson.)

Payroll Deductions—Period of Oct. 1 to Oct. 15, 1941—(Cont'd)

	Dues	Candy	Cokes	Laundry	Total
Bernice Carl		.05			.05
Sophie Jordan		.05			.05
C. H. Bergman			.15		.15
Glenn Hamilton			.10	.40	.50
J. K. Jensen			.35	.25	.60
Leland Stanford			.10		.10
	<u>41.50</u>	<u>6.65</u>	<u>32.35</u>	<u>29.70</u>	<u>112.00</u>
				29.7	1.87

* Figures in circle.

BOARD'S EXHIBIT No. 15-C

42.00

	Dues	Candy	Cokes	Laundry	Total
Western Gateway Storage					
Chastain, James	.50				.50
Collins, A. W.	.50		.55	.40	1.45
Fricke, Jerry	.50		1.50		2.00
Hall, George J.	.50	.50			1.00
Henninger, C. E.	.50		.80		1.30
Mills, Howard	.50		1.95	.80	3.25
Porter, Earl	0			2.10	2.10
Sheets, H. B.	.50	.15	.50		1.15
	3.50	.65	5.30	3.30	12.75
Idaho Gas & Oil Company					
Robson, Delbert	.50				.50
Thompson, Harvey	.50				.50
	1.00				100
Covey Gas & Oil Co.					
Jones, H. C.	.50				.50
Jones, Joe	.50				.50
Johnston, Virginia	.50				.50
Porter, Leah	.50				.50
Smith, Orla Mae	1.00	.05			1.05
	3.00				3.05
				1.87	
	49.00	7.35	37.65	33.00	128.87

[Figures in circle] : 39.25

(Testimony of P. W. Carlson.)

Q. (Mr. Penfield, continuing) I show you Board's Exhibit 16A, B and C for identification, and ask you if you will tell us what it is? [310]

A. This is a list of the employees of the Idaho Refining Company, Western Gateway Storage Company, Idaho Gas & Oil Company, Covey Gas & Oil Company, Payroll Deductions for the Period June 1 to June 15, 1942, including deductions for dues, cigarettes, cokes and laundry.

Q. Is it prepared in identically the same manner as Board's Exhibit 14 for identification?

A. Yes.

Q. Is it also part of the official records of the Association? A. Yes.

Mr. Penfield: I offer this in evidence.

Trial Examiner Riemer: The Board has offered Exhibit 16A, B and C for identification.

Mr. Merrill: We object to it on the grounds that it is incompetent, and pertains to matters happening after the allegations in the complaint with reference to this matter, and is immaterial for any purpose.

Mr. Penfield: Well, I don't think that I am wrong on the time of the complaint. This happens to contain periods before the issuance of the complaint.

Trial Examiner Riemer: The objection is overruled. It may be admitted and marked in evidence as Board's Exhibit 16A to C, inclusive.

(Whereupon the document heretofore marked as Board's Exhibit 16-A, B and C, for identification, was received in evidence.) [311]

(Testimony of P. W. Carlson.)

BOARD'S EXHIBIT No. 16-A

IDAHO REFINING COMPANY

POCATELLO, IDAHO

EMPLOYEE BENEFIT AND LABOR ASSOCIATION—
PAYROLL DEDUCTIONS

Period from June 1st to June 5, 1942

Name	Dues	Cig.	Cokes	Laundry	Total
Western Gateway Storage Employees					
Collins, A. Warren	.50	1.30	1.05	1.05	3.90
Gregor, Richard C.	.50	2.03	1.80		4.33
Fricke, Harold	.50		.40		.90
Hall, Geo. J.	.50	1.96	4.20		6.66
Henninger, C. E.	.50		.75		1.25
Jensen, J. K.	.50	.86	1.25		2.61
Morris, Jack D.	.50		1.25	.85	2.60
Porter, Earl B.	.50	.99	.45		1.94
Pope, Lester, D.	.50	1.45	1.70		3.65
	<u>4.50</u>	<u>8.59</u>	<u>12.85</u>	<u>1.90</u>	<u>27.84</u>

Idaho Gas and Oil Company Employees

Harvey Thompson	.50				.50
-----------------	-----	--	--	--	-----

Covey Gas and Oil Company Employees

Jones, H. C.	.50	.56			1.06
Porter Leah	.50				.50
	<u>1.00</u>	<u>.56</u>			<u>1.56</u>

Summary:

Cash Received:		Dues	41.50
Idaho Refining Co.		Cig.	60.18
(B J. 50c)	156.63	Coke	71.10
Western Gateway	27.84	Laundry	44.25
Idaho Gas	.50	a/c Rec	7.83
Coveys	3.29		
Cash Sales			
	<u>218.26</u>		<u>224.86</u>

(Testimony of P. W. Carlson.)

Accounts Receivable:

George E. Howell .50

Forward 6.10

 224.86

BOARD'S EXHIBIT No. 16-B

IDAHO REFINING COMPANY

POCATELLO, IDAHO

EMPLOYEE BENEFIT AND LABOR ASSOCIATION—

PAYROLL DEDUCTIONS

Period from June 1st to June 15, 1942

Name	Dues	Cig.	Cokes	Laundry	Total
Moss, Samuel P. Jr.	.50				.50
McNurlen, C. E.	.50	1.30			1.80
McMullin, Daryl J.	.50	1.30			1.80
McMillan, Wm.	.50				.50
Newman, Kirby	.50	.73		1.45	2.68
Oliver, James	.50			.65	1.65
Pope, Max	.50	.15	1.00	2.00	3.65
Peters, Delmer	.50	.75	1.15	.50	2.90
Pearson, Vess	.50	.25	2.55		3.30
Primbs, Valerie	.50		.60		1.10
Parson, L.M.					
Rice, Kermit	.50				.50
Roberts, Jr. Fred					
Rotering, Ann Marie					
Smith, E. V.	.50	.88	1.20		2.58
Smith, P. G.	.50	1.98	.45		2.90
Sheppard, W. A.					
Sheets, H. B.	.50	1.58	.35	1.10	3.53
Simpson, A. V.	.50	1.45	2.50	.95	5.40
Sherman, Francis	.50			.25	.75
Shreve, A. R.	.50	2.14	1.65	1.85	6.14
Sorenson, Rupert, A.	.50		5.50	2.35	8.35
Smart, Earl	.50			.40	.90
Schindele, Louis	.50		.75		1.25

(Testimony of P. W. Carlson.)

Period from June 1st to June 15, 1942—(Continued)

Name	Dues	Cig.	Cokes	Laundry	Total
Stewart, Cleone	.50	3.31	.10	2.75	6.66
Spraker, William E.	.50				.50
Summers, Ernest	.50	.28		5.30	6.08
Thomsen, J. A.	.50				.50
Thomas, Freeman			.15		.15
Thomas, Oran	.50	2.60		1.60	4.70
Williams, Waldon	.50	1.61	4.30	.85	7.26
Wright, Harold	.50		1.70	.25	2.45
Whitesides, M. D.		1.29	1.00	2.80	5.09
Warnick, Jesse Ralph	.50				.50
Westergard, William E.					
Vaughn, Harold S.					
Werrick, Devon					
VanVoorhis, Laurence C.	.50			.85	1.35
	<u>35.50</u>	<u>51.03</u>	<u>58.25</u>	<u>42.35</u>	<u>188.13</u>
	36.55				187.13

188.13

BOARD'S EXHIBIT No. 16-C

IDAHO REFINING COMPANY

POCATELLO, IDAHO

EMPLOYEE BENEFIT AND LABOR ASSOCIATION—

PAYROLL DEDUCTION

	From	to	1942		
Name	[Dates Illegible]		Dues	Cig.	Total
Anderson, John	.50	4.33	8.40	.40	13.63
Albertson, B. J.	.50				.50
Baldwin, V. A.	.50	.15	.45		1.10
Bailey, Harold	.50	.84	.30	.60	2.24
Bergman, Clarence	.50	7.60	.10	.80	4.00
Brown, E. H.	.50			1.60	2.10
Baum, Clark	1.00				1.00
Cozad, I. R.	1.00	3.90			4.90

(Testimony of P. W. Carlson.)

Name	Dues	Cig.	Cokes	Laundry	Total
Campbell, W. D.	.50		.60	.15	1.35
Cunningham, Chas.	.50	.75	.60		3.85
Carlson, P. W.			.25		.25
Carter, Bernice			.20		.20
Copening Jr. F. L.	.50	.15			.65
Chastain James D.	.50	1.14	.55	.85	3.14
Comstock, George	.50				.50
Devereaux Ulyses	.50	.15	4.00	.45	5.10
Duncan, Haskel	.50				.50
Dehlin, Alden Leroy	1.00				1.00
Durant, Charles, C.	.50				.50
1st	.50				.50
Dixon, Gwen	.50		.55		1.05
Farnsworth, G. L.	.50				.50
Grant, A. W.		.28			.28
Grimmett, G. E.	.50		.10		.60
Howell, George E.	.50				.50
Hancock, Elijah	.50	.45		.25	1.20
Hanson, C. E.	.50	1.45	1.40	.65	4.00
Holder, Vaughn	.50	1.68	3.10	.45	5.73
Hincley, Albert	1.00		3.00		4.00
Hincley, Dale	1.00	1.31	1.15	.75	4.21
Howard, W. L.	.50				.50
Ingalls, Frank					
Charles 1st	1.00				1.00
Johnston, Kenneth L.					
Jackson, Loran	.50	.43	.80	.25	1.98
Leigh, Garrett W.	.50	3.90			4.40
Jewkes, Kaye Edward	.50				.50
Miller, A. H.	.50				.50
Mills, Kay	.50	.14	[Illegible]	1.10	3.39
Miner, S. R.	.50	1.43	3.90	1.20	7.03
Mick, A. H.	.50		.65		1.15
Moyle, R. L.	.50	1.65	2.15	6.45	10.75
Moyle, Gilbert, D.					
Miller, R. E.	.50				.50
Holmes, E. B.				.40	.40
		29.43	23.30	16.45	

(Testimony of P. W. Carlson.)

Mr. Penfield: I would like to make the statement for the record to the effect that these two exhibits, 14 and 16 were taken from the——

Mr. Merrill: You mean 15 and 16. 14 was not admitted.

Trial Examiner Riemer: 15 and 16.

Mr. Penfield: 15 and 16 were taken from the official records of the Company to avoid putting in all of them.

Trial Examiner Riemer: All right, thank you.

[312]

(Whereupon Board's Exhibit 17A, C and D previously marked for identification were withdrawn, and the document heretofore marked as Board's Exhibit 17B for identification, was received in evidence.) [315]

BOARD'S EXHIBIT NO. 17-B

Idaho Refining Company—Employees' Benefit
Association

Annual Meeting—February 13, 1942

8:00 P. M.

Meeting called to order at 8:00. The following members were present: Del Peters, Earl Porter, Max Pope, Ray Shreve, Bob Moyle, E. V. Smith, A. H. Miller, Lester Pope, H. Bailey, Vic Simpson, U. Devereaux, F. Sherman, A. H. Mick, Jim Chastain, Kay Mills, C. E. Henninger, H. Sheets, Lee Farnsworth, L. Jackson, C. Murrar, K. C. Brower, and Reid Miner.

(Testimony of P. W. Carlson.)

Election for new officers was held with the following offices being filled by the following men:

President—Del Peters, unanimously elected.

Vice President—A. H. Mick, unanimously elected.

Secretary and Treasurer—P. W. Carlson, unanimously elected.

Grievance Committee—James Chastain, Chairman

E. H. Brown

U. Devereaux

Social & Welfare Committee—W. D. Campbell, Chairman

K. C. Brower

Harvey Thompson

Auditing Committee—Max Pope, Chairman

H. Sheets, unanimously elected

Safety Committee—Tom Collins

H. Duncan, Chairman

Motion was made by members that the Board of Directors be empowered to change the By-Laws to read as follows: That Hospital Benefits be paid at the rate of three dollars and fifty cents (\$3.50) per day with a maximum of forty-nine dollars (\$49.00) in any one calendar year. Motion was carried.

Meeting was adjourned at 9:45 P. M.

EARL B. PORTER,

Secy.

(Testimony of P. W. Carlson.)

Q. Now, Mr. Carlson, as a matter of fact, only the totals of the deductions shown on Exhibits 15 and 16 were given to the Refining Company, I believe—the totals for deductions from the payroll—is that the fact?

A. Well, that was the only thing that was of interest to them. Of course, as I submitted the entire record, the others would be segregated, but the totals are the only thing that they were interested in.

Q. They were merely deducted from the employees' check? A. Yes.

Q. That was due to the written request of the employee at the time? A. Yes.

Q. Now, I beleive that you said that these deductions aside from dues were for candy and Coca Cola and matters purchased through the vending machine from which the Association received any profit, if there was any? A. Yes.

Q. And that idea was initiated as a matter of fact, by the Association? A. Yes.

Q. The Refining Company had absolutely nothing to do with that, one way or the other, did it?

A. No, not to my knowledge.

Q. The members initiated that movement for their own conven- [318] ience. A. Yes.

Q. And the profits, if there were any, you say, went into the benefit fund? A. Yes.

Q. And from that benefit fund, the members received various payments if they became sick or in the hospital or anything of that sort, is that correct?

(Testimony of P. W. Carlson.)

A. Well, that was received from the benefit fund, yes.

Q. And that was from the profits, if there were any, from the vending of these articles?

A. No, the benefit fund consists only of the dues.

Q. I see. Then what fund would these items go into, these profits go into?

A. The Welfare Fund.

Q. What was that used for?

A. It was used for recreation activities among employees, to foster fellowship and good will. [319]

Redirect Examination

By Mr. Penfield:

Q. Did I understand you to say, Mr. Carlson, that you only gave the company the totals that would appear on those deductions as shown on Board's Exhibits 15 and 16?

A. I gave them the entire records there, but they were only interested in the totals.

Q. You gave them the totals that appear in the right-hand corner of those exhibits?

A. Yes, the total of all deductions for various things.

Q. And they make deductions from the individual employees on the basis of those totals?

A. Just the totals, yes.

Mr. Penfield: That is all.

Recross Examination

By Mr. Merrill:

Q. You prepared and submitted it that way as a matter of your own convenience? A. Yes.

(Testimony of P. W. Carlson.)

Q. It wasn't because of any desire or order of the company?

A. No, that was for the Association's own records there to find out whether we make any profits from the pop, or how much.

Q. If you had just submitted the totals to the company, that is all they——

A. That is all they would be interested in.

Q. That is all that they would be interested in in any way? [322]

A. That's right.

Mr. Merrill: That is all.

Mr. Penfield: I wasn't quite through.

Redirect Examination

By Mr. Penfield:

Q. In fact, you submit those sheets such as Board's Exhibits 15 and 16, is that correct?

A. Yes.

Q. Did I understand you to testify that the Association had been authorized in writing to make these deductions, that is the individual members of the Association had authorized the company in writing to make the deductions?

A. Yes, we have a written form there, whereby they sign it.

Mr. Penfield: Will you mark this Board's Exhibit 18 for identification?

(Whereupon the document hereinabove referred to was marked as Board's Exhibit 18 for identification.)

Q. (Mr. Penfield, continuing): I show you

(Testimony of P. W. Carlson.)

what has been marked as Board's Exhibit 18 for identification, which has the title "Application for Membership in Idaho Refining Company Employees Benefit & Labor Association", and ask you to tell me what that contains?

A. It is an application for membership in the Idaho Refining Company Employees Benefit & Labor Association. It is a form that every one of the members, in applying for membership, or employees applying for membership signs before they are approved [323] by the board.

Q. Now, does the entire Board's Exhibit 18 consist of signed applications?

A. Well, there are some blanks in there.

Q. Would those be used for the purpose of signing up new members? A. Yes.

Q. And these are part of the official records, are they? A. Yes.

Q. I call your attention to,—well, I will read the entire title, "Application for membership in Idaho Refining Company Benefit & Labor Association, I, the undersigned, do hereby apply for membership in the Idaho Refining Company Employees Benefit & Labor Association, and if accepted, do agree to abide by all the rules and regulations of this Association whatever, and I also do authorize the paymaster of the Idaho Refining Company to deduct each month the money, dues and fines charged me by the Association, and in the event of my death, I designate as my beneficiary—" and then a place for the member's automobile license,

(Testimony of P. W. Carlson.)

and "Approved". I ask you if that is the only written authorization which members of the Association give to the company?

A. That the employee gives to the Association?

Q. Yes, "I hereby authorize the paymaster to deduct each month"? [324]

A. Yes, that is the only signed agreement that they have.

Q. Is there any other authorization with respect to the laundry and the cigarettes and the candy?

A. No, that is understood that it is to be handled in that manner. I believe that that is in the minutes.

Q. But that is the only—in what minutes?

A. In the minutes of the Board.

I think that the time they decided, or the time that this was made up, I don't believe that they had any vending machine.

Q. Then any authorization that is given by the members of the Association to the Company with respect to these other items would not be written, is that correct?

A. There is no signed agreement.

Q. When a member signs one of these applications, do you take any action with respect to that member in the way of noting an entry in the books or anything of that sort?

A. At the time that he signs that agreement, it is presented at the meeting of the Board, at the next meeting, and then each member is voted upon. Some

(Testimony of P. W. Carlson.)

of them are approved as members and others are rejected.

Q. Do you take any action with respect to that member's securing gasoline deductions at the Covey station?

A. No, I don't have anything to do with that part of it. That is handled through the Covey office.

Q. You don't call the Covey station? [325]

A. I call the Covey station at the time they sign an agreement, and give the Covey Service Station Attendant the name of the individual, and also the license number.

Q. Do I understand you to say that you call him at the time that particular individual signs one of these applications? A. Yes.

Q. When do you present these lists, such as we have in Board's Exhibits 15 and 16?

A. That is the list of deductions?

Q. Yes.

Mr. Moyle: I object to this as repetition.

Trial Examiner Riemer: Sustained.

Mr. Penfield: That is all.

Recross Examination

By Mr. Merrill:

Q. Mr. Carlson, the signed agreement to which you have testified, and which was read to you by counsel, is not delivered to the refining company, is it?

(Testimony of P. W. Carlson.)

A. No, it is a permanent record of the Association.

Q. Yes. Now, the refining company makes the deductions upon that list which you present, whether they are members of the Association, or whether they are not, don't they? A. Yes.

Q. And I call your attention to Exhibit 16 to illustrate, and particularly to Exhibit 16B, I note the name of M. D. Whitesides, and under the column "dues", there is a blank line [326] or a line drawn. What does that indicate?

A. That he is not a member of the Association.

Q. Now, I call your attention to the title "Cigarettes, \$1.29" and under the title "Cokes, \$1.00", and under the title "Laundry, \$2.80," making a total of \$5.09. What does that indicate?

A. That means that is the amount to be deducted by the payroll clerk from his check.

Q. So there we have an individual who is not a member of the Association at all, who pays no dues, but whose purchases from the Association are deducted from his payroll check and paid to the Association? A. Yes.

Q. Is that the case wherever you see the blank line drawn under the word "dues"? That they are not members of the Association? A. Yes.

Q. You know several instances, do you not, where individuals not members of the Association are thus permitted to purchase there and that the amount is charged to their payroll check?

(Testimony of P. W. Carlson.)

A. Yes.

Q. With respect to the laundry, that is an arrangement, is it not, between the Association and the laundry company? A. Yes.

Q. And the laundry company—the National Laundry Company, is [327] it not? A. Yes.

Q. Gives to the Association a discount for that business? A. Yes.

Q. And the Idaho Refining Company has absolutely nothing whatever to do with that?

A. No, they don't have anything to do with that at all.

Q. With the Covey Gas & Oil Company, you call up for any employee on that, don't you?

A. Well, I happen to only for the members that I need to call up for. However, I do not know just how it is handled by the company in that respect.

Q. That is, you say you don't know what the company does with individuals who receive discounts for gasoline who are not members of the Association, is that what you mean?

A. Yes.

Q. You only do that with reference to members of the Association? A. Yes.

Q. And that there are individuals who are not members of your association who get this same privilege of discount on gasoline?

A. I am under that understanding.

Q. That is your understanding?

A. Yes, sir.

(Testimony of P. W. Carlson.)

Q. When you do this calling on behalf of the members of the Association, is it on company time?

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A. It is on company time due to the fact that I call at the time that they sign the application.

Q. I see. To make a record? A. Yes.

Q. And you do make a record of it?

A. Yes.

Mr. Merrill: I think that is all.

Redirect Examination

By Mr. Penfield:

Q. Are these cards signed on company time, these application blanks? A. Yes.

Mr. Penfield: That is all.

Q. (Trial Examiner Riemer): Mr. Carlson, does the Association have a constitution as distinguished from the by-laws? A. I do not know.

Q. You don't have it?

A. I don't have it. I haven't seen it.

Mr. Penfield: I would like the record to show that we subpoenaed the constitution among other things and that was also not forthcoming.

Trial Examiner Riemer: You are excused, Mr. Carlson. Thank you very much.

(Witness excused.)

Mr. Penfield: I will call Mr. Archibald.

LEO ARCHIBALD

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was thereupon called as a witness by and on behalf of the Board, and being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your full name for the record.

The Witness: Leo Archibald.

Trial Examiner Riemer: Where do you live?

The Witness: 556 Jefferson, Pocatello.

Direct Examination

By Mr. Penfield:

Q. Where are you employed?

A. At the present time?

Q. Yes.

A. For the Union Pacific Railway.

Q. In what capacity? A. As a welder.

Q. Were you ever employed by the Idaho Refining Company? A. Yes.

Q. At what time, and in what capacity?

A. Well, I started for them on January 25, 1941, as a welder, and mechanic,—truck mechanic.

Q. What were your duties?

A. General repair of trucks—maintenance, welding and repair of tanks—transportation tanks.

Q. Did you work exclusively with the trucks?

A. Almost exclusively, yes. [330]

Q. Did you do other work—

A. No.

Q. —aside from work on the trucks?

A. No, not besides trucks and tanks.

(Testimony of Leo Archibald.)

Q. By "tanks", what do you mean?

A. Transportation tanks used on the trucks—trailer tanks.

Q. During the time that you worked for the Idaho Refining Company, who was your foreman?

A. Kermit Rice.

Q. When did you cease working for the Idaho Refining Company?

A. November 13, 1941,—1942—or 1941.

Q. What was that date again?

A. November 14, 1941.

Q. November 14, 1941.

A. The 13th—the night of the 13th is the last day that I worked for them.

Q. On what date were you discharged?

A. The morning of the 14th.

Q. November 14? A. Yes.

Q. 1941? A. 1941.

Q. At the time that you first came to work for the Idaho Refining Company, were you a member of the International Association of Machinists, Local 198? A. No. [331]

Q. Were you a member of any labor organization affiliated with the American Federation of Labor? A. No.

Q. Did you become a member of the Idaho Refining Company Employees Benefit & Labor Association? A. Yes.

(Testimony of Leo Archibald.)

Q. When did you become a member?

A. I couldn't be sure of that date. It was probably a week or so after I went there.

Trial Examiner Riemer: Keep your voice up, please.

A. (Continuing) I am not sure of the date. Possibly a week or so after I was employed.

Q. (Mr. Penfield, continuing) During the time that you were employed by the company, did you ever apply for membership or become a member in any organization other than the Association?

A. Yes.

Q. And what was that organization?

A. Machinists Local—American Federation of Labor.

Q. Is that the International Association of Machinists, Local 198?

A. That is right.

Q. When did you sign an application to join this organization?

A. I am not sure of the exact date of signing the application I think that it was somewhere near the end of September. [332]

Q. What were the circumstances—

Mr. Moyle: What year?

The Witness: 1941.

Q. (Mr. Penfield) Was that in September, 1941?

A. That's right.

(Testimony of Leo Archibald.)

Q. What were the circumstances that led to your signing with Local 198 of the Machinists?

Mr. Moyle: We object to that as immaterial.

Trial Examiner Riemer: What is the purpose of that, Mr. Penfield?

Mr. Penfield: I merely want to place the time and the man's union activities.

Trial Examiner Riemer: Well, you have placed it in September of 1941. The objection is sustained. If you want to show the nature of his union activities after he joined, that is something else.

Q. (Mr. Penfield, continuing) Where did you sign your application?

A. At Mr. Rosqvist's home.

Q. Who is he?

A. He is, I believe, the state representative of the Federation of Labor. I think that is his official title.

Q. Who was with you?

A. There were several of the truck drivers.

Q. Were any of the truck mechanics there?

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A. One.

Q. Did you all go to Mr. Rosqvist's home together?

A. Yes.

Q. Prior to going there, had you talked to any of the truck drivers about their signing with the Union?

A. Yes.

Mr. Moyle: We object to that as immaterial.

(Testimony of Leo Archibald.)

Trial Examiner Riemer: Overruled.

A. Yes, we did.

Q. (Mr. Penfield, continuing) And what did you decide?

Mr. Moyle: That is calling for a conclusion.

Mr. Penfield: All right.

Q. (Mr. Penfield, continuing) What discussion did you have?

A. Well, the discussion was that that was the only way that we could improve our working conditions out there and lay the matter before Mr. Moyle—that is the only way that we could get it before Mr. Moyle.

Mr. Moyle: We object on the grounds that it is immaterial and hearsay as far as this respondent is concerned.

Trial Examiner Riemer: The objection is overruled. Will you keep your voice up and talk as loudly as you can?

Q. (Mr. Penfield, continuing) Did you go to see Mr. Moyle?

A. I called him by telephone and made an appointment with him.

Q. Did you ever see him? [334]

A. No.

Q. (Trial Examiner Riemer) When was this?

A. Oh, I had tried for probably a month or six weeks prior to joining the union to see Mr. Moyle and talk to him.

Q. (Mr. Penfield, continuing) Did you come to

(Testimony of Leo Archibald.)

any decision from those conversations with the truck drivers?

Mr. Moyle: That would be purely self-serving. We object to it on that ground.

Trial Examiner Riemer: Overruled.

A. We concluded that the only way to contact Mr. Moyle was through the union—by joining it.

Q. (Mr. Penfield, continuing) Who arranged this meeting at Mr. Rosqvist's house?

A. Myself, and several of the truck drivers.

Q. Did you make an appointment in advance with Mr. Rosqvist?

A. We did—I did.

Q. You made the appointment by telephone?

A. That's right.

Q. What is your best recollection of the date that this meeting was scheduled?

A. I couldn't recall that exact date, but it was near the end of September.

Q. About how many persons attended this meeting?

A. There would be about seven, including myself.

Q. What did Mr. Rosqvist tell you? [335]

Mr. Moyle: We object to that as hearsay, incompetent and immaterial.

Trial Examiner Riemer: Is this to be connected up in any way?

Mr. Penfield: Yes, I am seeking to establish that they—well, I think that I can get it.

Trial Examiner Riemer: All right, I will permit

(Testimony of Leo Archibald.)

it subject to your connecting it up, and I will entertain a motion to strike if it isn't connected.

A. We talked to Mr. Rosqvist about what benefit we could derive from joining the union, and he told us that if we could get 50 per cent. of the drivers or mechanics to sign with the union, the union would represent us out there and try to give us a little better conditions,—conditions and better wages.

Q. Did he say anything about what union you should join?

A. Well, he was the representative of the Federation of Labor. Of course, I had to join 198 Local, the Machinists, because I was a mechanic, and the drivers joined the Chauffeurs and Teamsters' Union.

Q. By that, do I understand that you mean that he said that the drivers should sign with the Teamsters Union? A. That's right.

Q. Did the persons present at that meeting sign application cards? A. They did. [336]

Q. The truck drivers as well as the truck mechanics? A. That is right.

Q. Was anything said about signing up the remaining drivers?

A. Yes. I took the application blanks with me and gave them to some of the different drivers.

Q. You received the application blank from whom? A. Mr. Rosqvist.

Q. (Trial Examiner Riemer) These were application blanks from the Teamsters Union?

A. In the Teamsters Union, yes, sir.

(Testimony of Leo Archibald.)

Q. (Mr. Penfield, continuing) Did you take any applications for the Machinists Union?

A. I don't recall if I took any out at that time. However, some of the fellows signed up in the Machinists Union.

Q. How many applications in the Teamsters did you take?

A. I don't recall the exact number.

Q. Did you distribute them to the truck drivers?

A. Yes, I did.

Q. Did they return them to you?

A. They returned them to me signed and with their dues.

Q. Had Mr. Rosqvist requested that you collect the dues? A. No, the men themselves did.

Q. But you did receive the dues?

A. I did. [337]

Q. Where did you give these truckdrivers the application cards?

A. Several different places, out in the plant, and outside of the plant, wherever I happened to meet one of them.

Q. Where did they return the cards and give you the money?

A. Sometimes at the plant and sometimes outside of the plant.

Q. What did you do with this money?

A. I turned it over to Mr. Rosqvist and received receipts for each individual.

Q. During this time, did you discuss joining the Union with any of the truckdrivers?

(Testimony of Leo Archibald.)

A. Yes, we talked of it.

Q. Where did these discussions take place?

A. Well, at various places. Sometimes in the plant, and sometimes outside of the plant—lunch hours and after work.

Q. Lunch hours at the plant? A. Yes.

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Q. (Mr. Penfield) Mr. Archibald, do you know Kermit Rice?

A. Yes, he was my shop foreman.

Q. Did you have any conversation with him prior to November 14, 1941? A. Yes.

Q. When did that occur?

A. I could not be sure of the dates on that.

Q. To the best of your recollection?

A. Oh, it might be a month before, or a week prior to that.

Q. What is your best recollection, was it a month or a week?

A. Oh, probably it would be, I would say, a couple of weeks.

Q. Where did this conversation take place?

A. As I recall, just outside of the shop. We used to go out for a smoke for about five minutes, once in a while, during the day.

Q. What was said to you?

A. I don't recall how it came out, but he made the remark that Unions had never done him any good. [344]

Q. Was anything else said?

A. That was all that was said on the matter.

(Testimony of Leo Archibald.)

Q. Did you have any further conversations with Mr. Rice? A. No, no further.

Q. Was anything said during this conversation about the truck drivers?

A. No, there wasn't.

Q. Did you ever have any conversation with Mr. Rice in which anything was said about truck drivers?

A. Not that I recall, in particular.

Q. Did you work full time on November 13, 1941? A. Yes, I did.

Q. Did you come to work on November 14, 1941?

A. Yes.

Q. What occurred that morning?

A. Well, I went over to unlock my tools, and change clothes, ready to go to work, and Mr. Rice informed me that he would have to lay me off.

Q. Did you have any conversation with Mr. Rice?

A. I asked if I might inquire why.

Q. What did he say?

A. He told me that for getting drunk and laying off work.

Q. Did you say anything further to him?

A. I just laughed at him, and told him that we both knew what it was about. He offered me his truck to haul my tools [345] away.

Q. Did you get your check that morning?

A. No.

Q. What was your regular pay day?

A. On the 5th and the 20th.

(Testimony of Leo Archibald.)

Q. When did you get your check?

A. I think it was the following Monday morning, I got my check—I believe this was Friday.

Q. Did you get your termination report?

A. Yes, I got my termination report on Monday or Tuesday, I am not sure.

Mr. Penfield: I would like to have this termination report marked for identification.

(Whereupon the document hereinabove referred to was marked as Board's Exhibit 19 for identification.)

Q. (Mr. Penfield, continuing) I show you Board's Exhibit 19 for identification and ask if you can tell me what it is?

A. Yes, that is a termination report that they issued to me at my request.

Q. That is the Company did?

A. That's right.

Mr. Penfield: I offer Board's Exhibit 19 for identification in evidence.

Trial Examiner Riemer: Has the witness testified when he got that, Mr. Penfield? [346]

Mr. Penfield: I believe that he did.

The Witness: I could not be absolutely positive of that date.

Mr. Moyle: We have no objection.

Trial Examiner Riemer: May I see it, please? It may be admitted and marked in evidence as Board's Exhibit 19.

(Whereupon the document heretofore

(Testimony of Leo Archibald.)

marked as Board's Exhibit 19 for identification, was received in evidence.)

BOARD'S EXHIBIT No. 19

Notice of Separation and Disqualification

1. Worker's Name (Last) Archibald (First) Leo (middle) 2. S.S.A. No. 518-09-2058
3. Place of Employment Idaho Refining Company, Pocatello, Idaho
4. Last Day Worked Nov. 13, 1941 5. Regular Occupation Truck Mechanic
6. Reason for Separation:
 - () Left Work Voluntarily
 - (x) Discharged for Misconduct in Connection With Employment
 - () Strike, Lockout or Other Labor Dispute
 - () Sickness, Injury or Other (Explain Below)
7. Explain in Detail: Irregular in reporting for work.
8. Has Worker Received Wages in Lieu of Notice?
Yes () No (x) Amount \$.....
Equal to pay From the Period From (Month) (Day)..... to (Month)..... (Day).....

I certify that the above information is true and correct. I do waive notification of the validity of any claim for benefits arising in connection with this report.

9. Employer's No. 250 2911-02830

(Testimony of Leo Archibald.)

10. Firm Name Idaho Refining Company
11. Address P. O. Box 767, Pocatello, Ida.
12. Signature John H. Peterson
13. Date Nov. 14, 1941
14. Title Treasurer

Notice to Employer

Fill out in triplicate; give yellow copy to worker, keep blue copy for your files, mail white copy to the Unemployment Compensation Division.

Notice to Worker

Take this notice to the nearest Idaho State Employment Service Office if you wish to file a claim for benefits.

State of Idaho
Unemployment Compensation Division
Industrial Accident Board
Boise, Idaho

Instructions to Worker

Take this notice immediately to the nearest Idaho State Employment Service listed below if you desire to file a claim for Unemployment Compensation Benefits. If the nearest office is inaccessible to you, send a post card to that office asking for information on the manner of filing claims. In order to receive benefits for unemployment, you must:

1. Register for work
2. File a claim for Benefits

(Testimony of Leo Archibald.)

3. Be able to work and available for work

4. Serve a waiting period of two weeks of total unemployment (a week of unemployment is a week of no work or a week of less than full-time work during which wages earned were less than the weekly benefit amount established for the individual claimant). The waiting period weeks need not be consecutive but must be wholly within a period of 91 consecutive days.

5. Have earned wages in covered employment during the base period of \$140 or more, \$78 of which must have been earned in a single quarter. Certain conditions surrounding separation from work may disqualify you for a period of from one to five weeks. You will be informed of such disqualification, if any, and be given an opportunity for a fair hearing. Among the disqualifying conditions are:

(a) Voluntarily quit without good cause in connection with your employment

(b) Discharged for misconduct in connection with your employment

(c) Failure to apply for or accept available, suitable work when offered or directed by the Employment Service or the Industrial Accident Board.

Warning

It is not necessary to employ anyone to aid you in collecting benefits. A representative in the office to which you report will explain your rights and what you must do to qualify for benefits.

Idaho Employment Service Offices are located at:

(Testimony of Leo Archibald.)

Boise	Jerome	Preston
Bonnors Ferry *	Lewiston	Rexburg ****
Burley **	Moscow	Salmon
Caldwell	Nampa ***	Sandpoint
Couer d' Alene	Orofino	St. Anthony
Grangeville	Payette	St. Maries
Idaho Falls	Pocatello	Twin Falls
		Wallace

* Branch of Sandpoint Office

** Branch of Twin Falls Office

*** Branch of Caldwell Office

**** Branch of St. Anthony Office

Mr. Moyle: I might say at this time, for the purpose of the record, that I have all the notices of separation and disqualification furnished me by the Company which Mr. Penfield asked for the first day of the hearing.

Mr. Penfield: Thank you, counsel; I would like to look those over at the first opportunity.

Q. (Mr. Penfield, continuing) During the time that you worked for the company had anyone ever criticized your work?

A. Only once. Mr. Rice thought I was taking too much time to do a certain job.

Q. When was this?

A. Oh, it was about a month or two months after I was first employed.

Q. What did you say?

(Testimony of Leo Archibald.)

A. I reminded Mr. Rice that the work was rather technical, and that it would take so much time to do a good job. [347]

Q. How many years' experience have you had as a mechanic and welder?

A. Slightly over 25 years, I believe.

Q. Did the truck drivers work regular hours?

A. No.

Mr. Penfield: I withdraw that question.

Q. (Mr. Penfield, continuing): Did the mechanics work regular hours?

A. No; regular starting time was eight o'clock. Sometimes we started earlier than that.

Q. How long a week did you work?

A. It wasn't regular. We sometimes worked 7 days a week, and tried to make it 6.

Q. Did you have any regular day off?

A. No, towards the last we tried to have every other Sunday off.

Q. Were you subject to call? A. Yes.

Q. At any time?

A. Usually at any time except over the weekend that we tried to rotate that.

Q. How often were you paid?

A. We were paid twice a month, the 5th and the 20th.

Q. Were you paid by check? A. Yes.

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Mr. Penfield: I would like to have this marked for identification.

(Whereupon, a group of 17 slips of paper entitled "Employees' Statement" stapled to-

(Testimony of Leo Archibald.)

gether, were marked for identification as Board's Exhibit 20.)

Q. (Mr. Penfield, continuing): I show you Board's Exhibit 20 for identification which consists of a number of papers stapled together and ask you if you can tell me what those papers are?

A. Yes, these are the slips that I received with my semi monthly check.

Q. Did you receive these with every payroll check?

A. Yes, either this type of slip or this little detachable one.

Q. What do they show?

A. They show the amount of hours worked and the amount paid and the amount of deductions and the date.

Q. I believe that you testified that you went to work on January 20, 1941?

Trial Examiner Riemer: January 25.

A. The 25th, I think that it was.

Q. (Mr. Penfield, continuing): Do you have slips for each payroll period since that time?

A. There may be some missing here. I am not sure.

Q. I note the one on top says, "2-15-41", is that the first one that you have?

A. Yes, I believe that would be the first check. They hold [349] back five days.

Mr. Penfield: May I go off the record?

Trial Examiner Riemer: Off the record.

(Discussion off the record)

(Testimony of Leo Archibald.)

Trial Examiner Riemer: On the record.

Mr. Penfield: I offer in evidence as Board's Exhibit 20 these payroll check stubs, showing the hours that the witness worked, and the amount earned from the period of 2-15-41 to and including the period ending 11-15-1941.

Mr. Moyle: If the Examiner please, I am not familiar with this form. As far as I know, it is the first one of the kind that I have seen, but it is quite apparent that under the general heading here, "time worked", the number of days refers in each instance as the entire number of days which the check covers, and the time worked undoubtedly refers to the fact that they got 139-1/2 hours in in 15 days. Now, if it is the intention of the Board to show that he worked all 15 days, then I think that we would have some objection to it. I think that it appears on its face that that is not the fact. I want to withdraw the former statement that we made. We will have some further evidence on these.

Trial Examiner Riemer: I will reserve ruling on them until you can familiarize yourself with the exhibit.

You let me know when you have checked it. Go ahead, Mr. Penfield. The reservation of my ruling is made without [350] limitation on your right, Mr. Penfield, to proceed to examine on the basis of this proposed exhibit, or your right to cross examine on the basis of the proposed exhibit.

(Testimony of Leo Archibald.)

Q. Mr. Penfield): On the basis of these records, Mr. Archibald, have you made any computations of your average weekly employment during the period covered by these records?

A. Yes, I did.

Q. And how did you make this computation?

A. My average daily hours per day, figuring every day from the time that I went to work until I was discharged, I worked slightly less than 9-1/2 hours per day.

Q. On the basis of what?

A. On the basis of my pay checks per week.

Q. On the basis of how long a week?

A. 7 days.

Q. How did you arrive at that computation?

A. Well, it was very simple, because I kept a separate record besides these of every day, and taking the simple average of the hours for every day, it would be slightly less than 9-1/2 hours.

Q. On the basis of a 7-day week?

A. That's right, including holidays.

Q. You included holidays, too? A. Yes.

Q. During this period, in which you worked for the company, [351] did you ever miss any time because of illness? A. Yes, I did.

Q. How much time?

A. Three days—possibly four days.

Q. Were those days included in the computation that you made? A. Yes.

Q. That you just referred to?

A. That's right.

(Testimony of Leo Archibald.)

Q. Was there anything in connection with your work which brought on your illness that you referred to?

A. I did considerable welding inside of those transport tanks without a sufficient amount of air circulation to take the fumes out,—it was very bad at times.

Q. Then your answer is “yes” to my former question? A. Yes, that’s right.

Q. Did you make any suggestions leading to the correction of this situation?

A. I suggested to Mr. Rice that we buy a motor and build a blower unit to remove all the fumes as we were welding in the tanks.

Q. Was this suggestion ever acted upon?

A. No, it wasn’t while I was there.

Q. During the time that you worked for the company, did you miss any other time with exception of this time for illness when [352] you were supposed to be at work?

A. I think, included in that, I missed one day due to personal matters that I had to attend to in the city of Malad. I was held over there one day.

Q. Is that the only time?

A. That is the only time.

Mr. Penfield: No further questions.

Trial Examiner Riemer: Mr. Moyle?

Cross Examination

Q. (Mr. Moyle): Now, as a matter of fact, Mr. Archibald—

(Testimony of Leo Archibald.)

Mr. Penfield: There was one further question.

Trial Examiner Riemer: Yes, go ahead.

Direct Examination (continued)

Q. (Mr. Penfield, continuing): I would like to have this marked for identification.

(Whereupon a membership card in Local 198 of the Machinists was marked for identification as Board's Exhibit 21.)

Q. (Mr. Penfield, continuing): I show you Board's Exhibit 21 for identification and ask you if you can tell me what it is?

A. Yes, that is my card showing my membership in Local 198 of the Machinists, affiliated with the American Federation of Labor, Pocatello.

Q. Does this book show when you were initiated?

A. That shows initiation on the 7th, I believe—I think that [353] it is the 7th of November. However, this was issued sometime after application and joining the Local.

Q. How much after?

A. Well, I could not be sure as to that. It would be at least two weeks.

Q. What year? A. 1941.

Q. 1941? A. Yes.

Mr. Penfield: I would rather not offer this in evidence, because it is the only copy. And I would prefer to request permission to withdraw it. I believe that it has been sufficiently identified to be the original.

(Testimony of Leo Archibald.)

Trial Examiner Riemer: Then we might as well go on. Mr. Penfield is not going to offer it. You can examine that any time.

Q. (Mr. Penfield, continuing): On what date does Board's Exhibit 21 show that you were initiated? A. It shows November 7.

Q. 1941? A. 1941.

Trial Examiner Riemer: May I see it?

Mr. Penfield: Yes. That is all.

Cross Examination (continued)

Q. (Mr. Moyle): You knew, Mr. Archibald, that Mr. Rice was a [354] union man?

A. No, I didn't, except that he told me that he had belonged to unions, and whether he did at that time, I wouldn't know.

Q. You knew that he was a charter member here in Pocatello of Machinists Local 685?

A. I knew that he had belonged to one, because he informed me of that.

Q. You knew that his name appeared in the Local Hall here on the charter?

A. No, I didn't know that.

Q. And that all the time that you worked for him, you knew that he had a retirement card from the union on account of the position he held with the refinery?

Mr. Penfield: I object to this line of questioning on the ground that it has already been testified to that Rice told him that the Union didn't do him any good. I don't think that it is relevant.

Trial Examiner Riemer: Overruled.

(Testimony of Leo Archibald.)

A. (Continuing): I didn't know what union that he had belonged to, or that he held a retirement card from any union.

Q. (Mr. Moyle, continuing): Or what his present status in the union was?

A. No, I didn't.

Q. Mr. Rice, at the time that you were employed, didn't ask you anything about your labor affiliations?

A. Not about my personal relations, no. [355]

Q. And at no time did he suggest to you what you should do in reference to your labor associations? A. No.

Q. Now, you testified with reference to your asking Mr. Rice for a blower. When was that?

A. That was brought up several different times while I worked there at the shop.

Q. And these tanks, before they were welded, were always thoroughly steamed out?

A. That's right.

Q. And when any welding was done on the inside, all of the openings of the tank were opened?

A. Yes.

Q. You were free to adjust that as best you could?

A. Yes, you could do all you could with it.

Q. You knew when you came to work for the company that the equipment which it had for the work which it had to do was more or less inadequate, did you not?

(Testimony of Leo Archibald.)

A. I didn't know anything about the set-up there until after I was working there.

Q. Well, as soon as you started to work, you found out, didn't you? A. Oh, yes.

Q. And you understood very shortly after you went to work that the financial condition of the company was such that it was not [356] able to do everything that might be done under other circumstances?

Mr. Penfield: I object to that question.

Trial Examiner Riemer: Sustained.

Mr. Moyle: We offer to prove that it was nothing but the financial inability of the company to do it that prevented it doing some of the things that it otherwise would have done.

Mr. Penfield: I don't think that is material.

Mr. Moyle: Of course, I don't think that this matter is in issue.

Trial Examiner Riemer: I don't think so, either. I don't think that the Board contends that the respondent was at fault because this man had to weld a tank in which there were gas fumes, and that that caused him any illness.

Mr. Penfield: We make no such contention.

Q. (Mr. Moyle, continuing) Now, on each of these slips in Exhibit 20,—Board's Exhibit 20—that you have furnished, under the heading "Time Worked", the number of days in each instance is the full period which the paycheck covers, is it not? A. Yes, that's right.

(Testimony of Leo Archibald.)

Q. Now, of course, taking that first paycheck, you didn't work on the 26th of January, 1941, which was a Sunday, as my calendar shows it?

A. Well, I could not be sure about that. [357]

Q. Well, there were Sundays when you did not work?

A. Yes, there were.

Q. And there were holidays when you didn't work?

A. I don't recall if I worked on holidays or not.

Q. And there were days when you were absent and didn't work?

A. That's right.

Q. But in each instance here, the number of days, or the days shown there, are the number for the full period of your pay check?

A. Your check always covers the full period whether I worked or not.

Q. When it says "time worked ... days", the days are for the full period and not the days you actually worked?

A. These are the hours I actually worked.

Q. I am asking about the days only.

A. That would not necessarily show the days.

Q. Well, it doesn't show them?

A. It covers the pay period.

Trial Examiner Riemer: In other words, it covers the pay period, and not the actual days worked?

The Witness: That is the idea. That is right.

Trial Examiner Riemer: The hours worked are shown on there.

(Testimony of Leo Archibald.)

Mr. Moyle: Yes, the hours are given, and the amount of the pay check. With that understanding, we have no objection to the introduction of Board's Exhibit 20. [358]

Trial Examiner Riemer: I might as well rule on it at this time, then. Board's Exhibit 20 now marked for identification, may be admitted and marked in evidence as Board's Exhibit 20.

(Whereupon the exhibit previously marked Board's Exhibit 20 for identification, was received in evidence.)

(Testimony of Leo Archibald.)

BOARD'S EXHIBIT No. 20

LEO ARCHIBALD

Period Ending	Time Worked		Amount Earned.	F. I. C	Deductions		Net Amount of Check
	Days	Hours			Credit Union	E. B. A. Purchases Prud Ins	
2-15-41	15	149	91.75	.92		5.30	\$ 85.53
[Pencilled notation on back of first page]: 25 to 1st Jan. 7 days = \$27.11							
2-28-41	13	112½	64.38	.64	.25	3.85	\$ 59.64
3-15-41	15	139½	101.55	1.02	11.63	5.17	\$ 82.48
3-31-41	16	128	88.20	.88	2.46	3.58	\$ 51.28
4-15-41	15	118	76.95	.77	.25	6.58	\$ 68.35
4-30-41	15	168 168	123.00	1.23	.25	3.79	114.52
5-15-41	15	153½	114.15	1.14	1.00	5.58	\$106.43

(Testimony of Leo Archibald.)

Period Ending	Time Worked		Amount Earned.	F. I. C	Credit Union	Deductions		Net Amount of Check
	Days	Hours				E. B. A.	Purchases Prud Ins	
5-31-41	16	136½	98.85	.99		.25	3.62	\$ 93.99
6-15-41	15	137	98.40	.98		1.25	7.99	\$ 88.18
6-30-41	15	135	93.60	.94		1.70	4.68	\$ 86.28
7-15-41	15	132	90.60	.91		1.50	5.93	\$ 82.26
7-31-41	16	183½	138.15	1.38		2.67	10.09	124.01
- 9								
8-15-41	15	160	120.00	1.20	.25	2.05	14.30	\$102.20
8-31-41	16	134½	97.05	.97	2.10	1.30	4.42	\$ 88.26
9-15-41	15	131½	93.30	.93	10.68	3.42	5.98	\$ 72.29

(Testimony of Leo Archibald.)

Period Ending	Time Worked		Amount Earned.	F. I. C	Credit Union	Deductions		Net Amount of Check
	Days	Hours				E. B. A.	Purchases Prud Ins	
9-30-41	15	159	110.25	1.10	10.38	.25	7.01 520 1.85	\$ 89.66
[In pencil: 164.50]								
10-15-41	15	156½	114.75	1.15	10.58	.50	10.36 520 (1.85)	\$ 94.01
10-31-41	16	156	\$116.40	1.16	.25	.25	11.69 2.27	\$100.78
11-15-41	13	108½	79.80	.80			16.38	\$ 62.62

(Testimony of Leo Archibald.)

Q. (Mr. Moyle, continuing) Now, you say when you first went to Mr. Rosqvist's, you took one machinist with you and 7 drivers, is that correct?

A. There were six or seven of us; I wouldn't recall the exact number of drivers.

Q. Who was the machinist?

A. Oran Thomas.

Q. Who were the drivers?

A. I couldn't recall the names of the drivers.

Q. Any of them?

A. Guy Campbell was one.

Q. Is he the only one that you remember?

A. That is the only name that I can recall definitely.

Q. Now, Thomas joined the union at your solicitation?

A. No, he joined it of his own choice.

Q. And Guy Campbell joined it at your solicitation?

A. No.

Q. Of his own choice?

A. Of his own choice. [359]

Q. You didn't suggest to either of these men that they should join?

A. We had talked the matter over between us.

Q. Now, in your entire 25 years' experience as a machinist and welder—or did you weld for the 25 years?

A. I have done welding incidental to my work for probably 20 years of that time.

Q. You were not what you would call an expert welder?

A. That's right.

(Testimony of Leo Archibald.)

Q. And your 25 years' experience had been more as a machinist and mechanic?

A. Mechanical work, yes.

Q. Than welding? A. That's right.

Q. And you in all those 25 years had never joined a union prior to joining on November 7?

A. That's right.

Q. You said that while you were at the respondent's refinery you were only criticized once for your work?

A. That's all I recall. Mr. Rice informed me that I was a little slow in doing certain jobs.

Q. And when was that complaint made?

A. Shortly after I went to work.

Q. And the complaint consisted solely of the fact that you were slow? [360]

A. That's all.

Q. Do you remember burning a hole in one of the tanks at the bottom? A. I don't—

Q. Four inches from where it should have been?

A. I don't recall clearly about that. It could have very easily happened with an arc.

Q. Whether or not it could have very easily happened, it did happen, did it not?

A. I am not sure. I remember something about Mr. Rice saying something about that.

Q. It was a very serious complaint that was made against you and to you at that time on account of that, wasn't it? A. No, it wasn't.

Q. Nothing was said to you about it?

A. I don't recall anything definite about it.

(Testimony of Leo Archibald.)

Q. Well, you wouldn't say that there was not a complaint made and that the matter was not discussed with you?

A. There certainly wasn't any serious complaint made, or I would distinctly remember it.

Q. And you were told at that time that that kind of work could not be tolerated?

A. I know that that was never said to me, or I would remember it.

Q. And that the question of your drinking and your drunkenness [361] on the job was discussed at that time?

A. It was not.

Q. And that you were told that if you continued in your drinking and in doing work of that kind that you would be discharged?

A. That is not true.

Q. And that these occurrences were prior to July of 1941?

A. No, sir.

Q. Can you fix the date when this welding experience to which I have referred occurred?

A. No, I cannot; I remember faintly something of Mr. Rice saying something about I had hit the tank away from the weld causing a leak. In welding, that is very, very easy to do with an arc, simply touch it with the end of the electrode, you wouldn't even know it, but it could cause a leak there. His complaint at that time, I recall talking about it, I had sealed the place I was intending to weld, but had accidentally touched this tank a short distance away from the weld. That is my memory of it.

(Testimony of Leo Archibald.)

Q. As a matter of fact, in touching it in the manner in which you suggest, you burned a four-inch hole through it, did you not? A. No, sir.

Q. When I say four inches, I mean four inches in diameter.

A. No, that would be utterly impossible. [362]

Q. You were not at work on the Fourth of July, you remember that, do you not?

A. I wouldn't recall for sure whether I was or not.

Q. And you were not at work on the 5th or the 6th? A. To the best of my memory——

Trial Examiner Riemer: Do you have the cards or payroll records to show?

Mr. Moyle: Yes.

Trial Examiner Riemer: I will accept those as much better evidence of whether or not this man did or did not work, than his recollections.

Mr. Moyle: This was really preliminary to the next question. I intend to offer the records.

Trial Examiner Riemer: I would certainly prefer to have those rather than this man's recollection.

Mr. Moyle: I will proceed then on that basis.

Q. (Mr. Moyle, continuing) When you came back to work on the 7th of July, that is after the 4th, 5th and 6th, you had been drinking and came on the job under the influence of liquor?

A. That is not true.

Q. And that matter was called to your attention was it not, by your foreman, Kermit Rice?

(Testimony of Leo Archibald.)

A. Yes, that is the time when I remember—that is when I was at Malad and didn't get back here due to personal affairs there, Mr. Rice said he was rather sore at me and he thought [363] maybe I had went off and got drunk. That is what he said. Not that I was drinking then, or had any liquor on me when I came to work. He informed me that he thought probably I had gotten drunk.

Q. The fact is, he did definitely complain about your coming on the job under the influence of liquor after the July 4 holiday?

A. No, sir; that is not true.

Q. Are you unable to say that it was the 4th of July that you went to Malad?

A. I am. I don't remember definitely the dates.

Q. In other words, you don't know what you did on the Fourth of July a year ago?

A. I don't recall for sure.

Q. Now, coming down to the Monday before you were finally discharged, that would be Monday the 10th, do you recall coming to work drunk?

A. No, sir; I did not come to work drunk.

Q. And that you were sent home on that day?

A. I was not sent home. I asked for permission to go home.

Q. And that you were not at work on the 10th, or the 11th, Monday or Tuesday, preceding your discharge?

A. I am not sure if I went to work on the 11th or not. I recall asking for permission to go home because I wasn't feeling well. [364]

(Testimony of Leo Archibald.)

Q. After Mr. Kermit Rice told you that you would have to go home, you told him that you had a bellyache?

A. He didn't tell me—I asked permission to go home.

Q. Well, you told him that you had a bellyache? A. That's right.

Q. Well, Mr. Rice at that time was pretty mad and told you that this situation could not go on any longer?

A. He didn't say anything about it right at that time.

Q. Well, when did he say what I have suggested?

A. I don't recall the exact date that Mr. Rice said to me and I rather thought at the time that he was rather kidding me, that I would have to let whiskey alone if I wanted to work for him.

Q. He told you that?

A. One time he told me, and I told him that any time I came to work when I was drunk, I wanted him to fire me.

Q. And that is what he did on the 14th?

A. That is what he did on the 14th.

Q. Now, for the last month or so, say the last 30 days that you worked for the company, Mr. Rice complained from time to time about the slowness of your work? A. He did not. [365]

Q. (Mr. Moyle, continuing) Now, during all this period, Mr. Archibald, the shop was very busy?

A. Yes, there was always plenty of work there.

(Testimony of Leo Archibald.)

Q. And so far as employees were concerned, the shop was short-handed?

A. That is right.

Mr. Penfield: What period are you talking about?

Mr. Moyle: I am talking about the entire period of Mr. Archibald's employment, January of 1941 to November of 1941.

Q. (Mr. Moyle, continuing) The majority of the work in the shop consisted of repairing, reconditioning, the company equipment which had been involved in wrecks—accidents—collisions?

A. No, that wasn't the case.

Q. Well, what did the work consist of?

A. Routine maintenance, repairs, mostly.

Q. Was there ever a time during the period when you worked for this company when there was not being repaired in the shop some of the company equipment which had been damaged on the road?

Mr. Penfield: I object to that. I don't see that it is relevant.

Trial Examiner Riemer: It is overruled.

A. I don't get your question quite clearly.

Mr. Moyle: Will you read my question, please?

[370]

(Thereupon the last question was read aloud by the reporter as hereinabove recorded.)

A. Well, that is not clear. What do you mean by "damage"? Do you mean actual wrecks, or due to breakdowns?

Q. Both.

(Testimony of Leo Archibald.)

A. No, there was always something to be repaired.

Q. You knew also that the company was short of rolling stock? A. Yes, I did.

Q. And that when a piece of equipment was laid up for any cause, the company either had to get it fixed as quickly and as expeditiously as possible, or actually delay the transportation of its refined products? A. That's right.

Q. And that the speed in the repairing of its equipment and getting it back on the road was imperative as far as the continued business of the company was concerned, that is correct, isn't it?

A. As far as I am concerned, I take a little more time on the job, and aim to keep it on the road a little longer. That was my only argument with Mr. Rice, and he agreed with me at the time that we spoke of that.

Q. Now, on the morning of the 14th, when you came to work, you came to work sometime before eight o'clock, did you not, in the morning?

A. I was there to report at eight. [371]

Q. And this conversation that you had with Mr. Rice was in the presence of Mr. Thomas?

A. I don't know if Mr. Thomas overheard the conversation or not.

Q. Well, he was right there with you, was he not? A. He was in the shop, I know.

Q. And was Mr. Brown there?

A. I don't recall for certain about that. I don't

(Testimony of Leo Archibald.)

remember seeing Mr. Brown that morning, at that time.

Q. But it was around eight o'clock when you were discharged?

A. I was all ready to go to work, yes.

Q. You hadn't yet begun work? A. No.

Q. So, as you stated yesterday, on your direct examination, you did no work on the 14th?

A. That's right.

Q. For the company. Now, was Mr. Thomas discharged? A. Not to my knowledge.

Q. He continued to work and is still working for the company, is he not?

A. I wouldn't know of my own personal knowledge.

Q. You haven't seen him recently?

A. No.

Q. And Mr. Thomas at that time—that is the time that you were discharged and he was retained—had joined the same union that you had joined?

[372]

A. I don't know how far Mr. Thomas had went with that. I know that he had signed an application.

Q. Well, he signed an application at the same time that you did, didn't he?

A. That's right.

Q. And, as far as you know, was initiated at the same time? A. No, he was not.

Q. Do you know whether he was initiated before or after you?

(Testimony of Leo Archibald.)

A. I don't think that Mr. Thomas was ever initiated. [373]

Q. You testified that there were some of the machinists signed up besides Mr. Thomas in the Union at the time you did, or thereafter. Who were they?

A. I think Mr. Wayne Nord, who was a helper out there. I wouldn't be positive as to whom. [386]

Q. Now, one other instance, do you recall a date last summer when your daughter drove you to work, and you spent the day in somebody else's car, sat in the back seat of the car all day?

A. I did ask permission to leave, and went out and sat in the car one day. [388]

Redirect Examination

Q. (Mr. Penfield) Mr. Archibald, you testified on cross examination that Mr. Rice never asked you about your union affiliations?

A. He never asked me personally about my own. He asked me one morning, if I knew that the truckdrivers had joined the union.

Q. When was this?

A. It was shortly before we were discharged.

Q. How shortly before you were discharged?

A. Oh, just a few days—I don't know exactly the date.

Q. A week or less than a week?

A. Probably around a week or less.

Q. What did you tell him?

A. I didn't tell him what I knew about the

(Testimony of Leo Archibald.)

truck drivers. He didn't ask me my personal affiliation.

Q. What is your present job, Mr. Archibald?

A. I am a welder for the Union Pacific.

Q. Did I understand you to testify that you had been doing both welding and mechanical work for 25 years?

A. Welding probably not quite that long.

Q. How long have you been doing that?

A. Probably 20 years.

Q. On your cross examination, you testified with respect to an instance in which a hole was burned, and you made some state- [389] ment that that could easily happen with an arc welder. Would you explain how that could happen?

A. Well, arc welding, you use a high voltage to carry your metal over and those things easily happen, and you get it between the electrode and the metal adjacent to the weld, if the metal was thin, it would cause a slight crack. That could very easily happen to you at any time.

Q. Could you burn a four-inch hole without knowing it? A. You could not.

Trial Examiner Riemer: Why couldn't you burn a four-inch hole?

The Witness: Your electrode, such as we used out there, is one-eighth of an inch in diameter and it would be impossible to burn a four-inch hole unless you would hold your arc in exactly the right position and draw a circle with it. If you touch

(Testimony of Leo Archibald.)

the metal, it might burn a hole right at that place or cause a crack.

Trial Examiner Riemer: How large would that hole be if you just touched it?

The Witness: It would probably only be a slight crack. It would require an effort on your part to burn a four-inch hole.

Q. (Mr. Penfield, continuing) You testified that Oran Thomas signed an application card in the Machinists at the same time that you did? [390]

A. That's right.

Q. Did Oran Thomas ever take an active part in the union following that?

A. No.

Q. Either out in the plant, or any place else?

A. No, not to my knowledge.

Q. Did he ever pass out cards or collect any money?

A. No, sir.

Q. You testified to one occasion on which you sat in the car most of the day. What were the circumstances concerning that?

A. I didn't want to explain those if I didn't have to. For the past six years, I have been under treatment for ulcers of the stomach, and different things, something I would eat or poison fumes will make me sick. That could easily be verified through Dr. Cochran, at Salt Lake City.

Q. And on this particular occasion, were you ill?

(Testimony of Leo Archibald.)

A. I certainly was.

Mr. Penfield: That is all.

Recross Examination

Q. (Mr. Moyle) Well, you do use liquor?

A. I take a drink occasionally, but very very seldom the last few years because of that condition.

Q. So your ulcers of the stomach are not so bad that they prevent you from drinking whiskey?

A. It is safe to say that I don't take a drink of liquor once [391] in two months.

Q. But you do drink?

A. Very, very seldom.

Q. And when you came to the refinery and sat in this car all day, you didn't ask anybody to take you home?

A. No, I thought that it would pass and I could go back to work.

Q. You didn't start work at all that morning?

A. As I remember, I worked until about ten o'clock and asked permission——

Q. And as the day wore on, you found that your condition didn't get better, and you just stayed there? A. That's right.

Q. You didn't get out of the car at all?

A. I don't know if I did or not. I don't remember that.

Q. And you had not been in contact with any fumes that morning, had you?

A. I don't recall what I had been doing the pre-

(Testimony of Leo Archibald.)

vious day, unless it was welding an oil tank we had laying outside. As I recall, that was the job that I was doing.

Q. When Mr. Brown complained to you about your staying off shift all day, you didn't tell him then that you were sick?

Trial Examiner Riemer: When was that?

Mr. Moyle: This was the day he sat in the automobile.

A. No, Brown made no complaint whatever. I simply told him that [392] I was sick and wanted to rest a while and see if I would feel better, and it was all right with him.

Q. You told Mr. Brown that?

A. Yes.

Q. There wasn't any discussion at that time about drunkenness?

A. No discussion then or afterwards.

Trial Examiner Riemer: Has the time of that incident been fixed?

Mr. Moyle: I have tried to fix it with this witness. He says that he doesn't know when it was.

Q. (Mr. Moyle, continuing) Do you?

A. No, I don't.

Q. Do you have any way of fixing it?

A. There is no way of my fixing that exact date.

Q. Was it before or after the Fourth of July?

A. There is no way of telling for certain.

Q. It was hot weather, wasn't it?

A. Yes, it was warm—summertime.

(Testimony of Leo Archibald.)

Q. It may have been late summer or early fall?

A. That I could not say for sure.

Q. Now, you stated to the Examiner that the crack which you caused in this particular tank was a slight crack?

A. Yes, that's right.

Q. Now, you saw the crack? [393]

A. I don't recall clearly about that. It seems to me that I remember Mr. Rice mentioning the fact that I had struck the tank away from the weld and caused a slight crack, but there wasn't anything in particular said about it.

Q. When was that discussed?

A. I don't know.

Q. When was the complaint made with reference to the time you worked there?

A. Sometime shortly afterwards.

Q. After the truck had gotten out on the road?

A. I suppose that it must have, I don't know.

Q. The truck had to be brought back and steamed out and rewelded?

A. I don't know. I don't recall what——

Q. That is your best recollection?

A. That is my best recollection.

Q. How long does it take to steam out a truck?

A. Steam them overnight, usually.

Q. How big a truck was this—the capacity of the tank?

A. I wouldn't recall the capacity. They run different sizes, and I never noticed particularly which size I was working on.

(Testimony of Leo Archibald.)

Q. You have no recollection at the present moment as to the size of the crack?

A. It would have to be small, I know that from experience.

Q. But you don't know from observation? [394]

A. No.

Q. But you do have a definite recollection that Mr. Rice complained about the work at that time?

A. It wasn't a complaint. He simply told me that I had stuck the tank and made a leak there.

Q. Now, Mr. Rice came back from New York on the 13th of July, did he not?

A. I wouldn't know the date that he came back.

Q. And when the episode of the Fourth of July had been called to his attention, he came to you and told you that, as early as the 13th or 14th of July, if that type of conduct continued he would have to discharge you? A. No, he did not.

Mr. Moyle: That is all.

Trial Examiner Riemer: Anything further?

Mr. Penfield: Yes.

Redirect Examination

Q. (Mr. Penfield) Now with respect to this truck in which you testified that you might have made a hole, do you recall whether that particular truck went out on the road?

A. No, I don't.

Q. Do you know whether it came back and was unloaded and steamed?

A. No, I don't know.

(Testimony of Leo Archibald.)

Q. If it had a four-inch hole in it, could it have been loaded [395] and gotten out?

A. It would be impossible.

Mr. Penfield: That is all.

Q. (Trial Examiner Riemer) Mr. Archibald, are you an auto mechanic?

A. Auto, truck and tractors—gasoline motors.

Q. For example, if a truck came into the garage and needed a carbon job, do you do that sort of job?

A. A carbon job?

Q. Yes, sir; grind the valves?

A. Yes, sir.

Q. Would you tell us the nature of the work that you did for the company at the refinery?

A. Well, any repair of any parts,—motor, transmission, rear end, any part of trucks or the trailers or the semi-trailers. I also built for them a semi-trailer, and I remodeled some of the transportation tanks and trailers so they could use these old tanks. That is, cutting out sections and inserting new sections to fit onto a different trailer.

Q. And you did the welding work in addition?

A. Yes, I did the welding work.

Q. How many truck mechanics were there at the refinery when you were employed, Mr. Archibald?

A. I believe the most at one time was four.

Q. That would include yourself and Oran Thomas? [395]

A. Myself and Oran Thomas and Bud Boyer,

(Testimony of Leo Archibald.)

and they had another fellow there, I believe that he was classed as a helper, and I don't recall his name.

Q. Did Boyer and Thomas do the same sort of work that you performed?

A. No, Mr. Thomas did some welding, but I did nearly all the welding.

Q. Did Boyer do any welding ?

A. I don't think that Mr. Boyer did any welding.

Q. Is it your testimony that you did most of the welding? A. Yes, sir. [397]

Q. Did you have an eight-hour day out there?

A. No, sir; well, in the wintertime, sometimes we would try to hold it down to eight hours, but it was nearly always nine or more.

Q. Was there any understanding that you had to work on Sunday?

A. No, sir; it wasn't compulsory except in extreme cases [398] they would ask you to.

Q. For example, tell us, what would Rice say to you?

A. Oh, he would just tell me, "Here is a certain unit here; we want you to tear the motor down and put in bearings, or grind this set of valves".

Q. And you would go to work on that job?

A. I would go to work and do that. If anything came up that I didn't know what they wanted to do about it, I would consult him or Mr. Brown.

Q. I believe that you have been unable to fix

(Testimony of Leo Archibald.)

the time that you discussed with Rice this question of increasing wages?

A. Yes, sir; I am unable to fix the date.

Q. Well, would you say it was in the summer of 1941?

A. It would be in the summer, yes, sir; sometime. [399]

Q. And in any conversation you had with Moyle over the telephone, did you tell him why you wanted to see him? A. No.

Q. Why did you want to see him?

A. I wanted to simply lay this matter before him and see if I couldn't get better working conditions with a little more wages there.

Q. You wanted to lay what matter before him?

A. This matter of wages and hours.

Q. Had you discussed the question of hours with Rice?

A. I don't recall us having a discussion on the matter of hours.

Q. But you did discuss wages with him?

A. Yes, sir.

Q. Although you wanted to discuss wages and hours and working conditions with Gilbert Moyle, you never succeeded in doing that?

A. I never succeeded in contacting him, no.

Q. Did you attend any union meetings before your discharge, Mr. Archibald? [401]

A. Which union?

(Testimony of Leo Archibald.)

Q. That is a proper question. I mean the union of which you were a member, the International Association of Machinists?

A. No, sir; I didn't attend any regular meetings. I was usually working when they were held.

Q. Did you attend any meetings of the Teamsters Union?

A. No, sir.

Q. Before your discharge? A. No, sir.

Q. On the morning of November 14, 1941, you reported for work?

A. Yes, sir.

Q. How did you come to work that day?

A. In my car.

Q. Where do you live?

A. 556 Jefferson.

Q. How far is that from the plant?

A. Oh, it would be approximately three miles.

Q. Who drove the car to work?

A. I drove it.

Q. What kind of a car is it?

A. Nash LaFayette.

Q. In the three miles that you have to drive to work, do you drive through the City of Pocatello?

A. No, Jefferson is out—

Q. You drove your car approximately three miles to work that [402] morning?

A. Yes, sir.

Q. Were you sober?

A. Yes, sir.

(Testimony of Leo Archibald.)

Q. Were you in fit condition to go to work?

A. Yes, I was.

Q. Had you worked on Friday, November 13?

A. Yes.

Q. Do you recall where you spent the evening of Friday, November 13th?

A. At home, to the best of my memory.

Q. Are you married?

A. Yes, sir.

Q. Do you have any children?

A. And grandchildren.

Q. Good for you. Mr. Archibald, you have testified that on various days you have reported for work and thereafter asked permission to be allowed to go home or to leave?

A. Yes, sir.

Q. On other occasions, you have testified that you did not report for work on some days—three or four days—on account of illness, I believe, and once because of some personal matters in Malad?

A. I think that is the only time, Mr. Examiner, that I was ever absent without permission, when I was in Malad due to personal business. [403]

I didn't get back and tried to call Mr. Rice, and didn't contact him.

Q. On days you reported for work and sought and obtained permission to leave, why did you have to quit?

A. Due to illness.

Q. What illness?

A. I hated to bring this out. I have ulcers of

(Testimony of Leo Archibald.)

the stomach, and sometimes I upset very easily, and it makes me very sick.

Q. Are you under treatment locally?

A. Dr. George Cochran of Salt Lake City. I am not under treatment right at the present time, but I was for a period of about six years.

Q. Will you please relate the conversation that you had with Mr. Rice on the morning of November 14, 1941?

A. All that was said that morning, I was unloading my tools and getting ready to go work, and he came in and walked over to me and said, "Sorry, but I will have to lay you off."

Q. What did you say?

A. I looked at him a little surprised, and I asked him if I might inquire why, and he says, "Yes, for getting drunk and laying off work".

Q. Was anything else said?

A. That was all that was said, except that I just laughed and told him that we both knew what it was all about.

Q. Was there anybody else present? [404]

A. Mr. Thomas was in the garage. Whether or not he overheard the conversation, I don't know.

Q. Where was he standing, do you know?

A. No, I couldn't place him exactly.

Q. Was he adjacent to or standing with you and Rice?

A. He wasn't standing with us. He was nearby.

Q. Do you know if Thomas was at his work bench or tool box?

(Testimony of Leo Archibald.)

A. No, I don't.

Recross Examination

Q. (Mr. Moyle) Before you went to work for the Union Pacific, in your present position, you had to take the medical examination, did you not?

A. That's right.

Q. What doctor examined you?

A. I think that it was Dr. Ray. I never did know his name for [405] sure, but I believe that is his name.

Q. And he passed you as fit for employment, of course, and you were employed after an examination?

A. I was employed, yes.

Q. Did you report to Dr. Ray the fact that you had ulcers that interfered with your work?

A. As I just said, I am no longer under treatment for ulcers. If I have them at all now, they are not bothering me.

Q. I just asked you if you called Dr. Ray's attention to that fact?

A. He didn't ask me, and I didn't tell him.

Mr. Penfield: I submit that the witness answered the question in the first instance.

Q. (Mr. Moyle, continuing) When were you last treated by Dr. Cochran in Salt Lake?

A. I could not fix the exact date. Dr. Cochran gave me a special diet to keep up and medicine to take.

Q. In any event, it was prior to your employment with the refining company?

(Testimony of Leo Archibald.)

A. Yes.

Q. That would be prior to 1941?

A. Yes, prior to that, but I was still getting some treatment at that time.

Q. During your employment with the refining company, you were not under medical treatment of any doctor? [406]

A. Only in taking—using this diet, that is all.

Q. How long before the beginning of 1941 was it that you last saw Dr. Cochran, was it in 1940, or prior to 1940?

A. I couldn't place the date when I last saw him.

Q. Would you say that you saw him during 1940?

A. 1940? Yes, I saw him sometime during 1940, but I could not place the date.

Q. What part?

A. I don't know.

Q. Winter, summer or spring?

A. I should judge it was sometime early in 1940—quite early.

Q. Were you working at that time at Boise?

A. No, sir; I was working at Pocatello?

Q. Working for the State in Pocatello?

A. That's right.

Q. And you went down to Salt Lake frequently in 1940?

A. No.

Q. Dr. Cochran treated you nowhere else other than in Salt Lake?

A. That's right.

(Testimony of Leo Archibald.)

Q. And you don't have any recollection now when you were in Salt Lake in 1940?

A. I haven't the date. It wasn't necessary to contact him often at all.

Q. And it may be that it was 1939 when you last contacted him? [407]

A. No, I think not. It was in the early part of 1940.

Q. Did you contact him more than once in 1940?

A. Not that I recall.

Q. Did he give you any instructions about drinking hard liquor?

A. He always gave me a written sheet, sort of diet instructions and certainly not to drink liquor to any excess at all.

Q. You mean that he told you not to drink liquor?

A. To excessive amounts, no.

Q. I am asking you if he told you not to drink it at all?

A. He didn't tell me not to drink it at all.

Q. On account of this condition you suffered from while you were employed by the refinery, didn't liquor have a greater effect on you, that is an intoxicating effect than it did prior to your ulcerous condition?

A. Well, I wouldn't ordinarily know. I haven't had enough experience with it.

Q. I see. In other words, you want to go on record here as stating that you have never been drunk?

(Testimony of Leo Archibald.)

A. No, sir; I do not. I have been drunk.

Mr. Moyle: That is all.

Redirect Examination

Q. (Mr. Penfield) Are you still on a diet?

A. No.

Q. When did you cease your diet?

A. Well, that is rather a hard question to answer, because even [408] now I am a little particular of what I eat.

Q. But not a regular diet?

A. No. I think sometime in 1940 was the last time I followed on a strict diet.

Q. You testified that you have been drunk. Did you ever report to your job drunk?

A. No, sir.

Q. Or any other job?

A. Nor any other job.

Mr. Penfield: That is all.

Trial Examiner: You are excused.

(Witness excused)

Mr. Penfield: I will call Mr. Williams.

ROY WILLIAMS

was thereupon called as a witness by and on behalf of the Board, and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your name, please.

(Testimony of Roy Williams.)

The Witness: Roy Williams.

Trial Examiner Riemer: Where do you live?

The Witness: Boise, Idaho.

Direct Examination

Q. (Mr. Penfield) Where are you employed at the present time?

A. For the Idaho Power Company.

Q. In what capacity? [409]

A. Working with the substation crew for the Idaho Power Company.

Q. What type of work?

A. Construction work.

Q. Where are you doing this work at the present time?

A. At the present time, we are working at Eden.

Q. Eden, Idaho?

A. Yes.

Q. Were you ever employed by the Idaho Gas & Oil Company?

A. Yes, sir.

Q. In what capacity?

A. I was deliveryman and warehouseman.

Q. Where were you employed?

A. Boise warehouse, Boise plant.

Q. What were your duties?

A. I done the delivering, and also kept the warehouse up.

Q. You mean that you did the delivering in trucks?

A. Yes.

Q. What sort of trucks were these?

(Testimony of Roy Williams.)

A. One was an International, 1000 gallon tank, and one GMC.

Q. What territory did you cover?

A. McCall,—from Boise to McCall, and Boise to Mountain Home and Boise to Nampa and Caldwell.

Q. You carried gasoline in these trucks?

A. Yes, sir. [410]

Q. Where did you deliver the gasoline?

A. To various company stations.

Q. You mean stations of the Idaho Gas & Oil Company?

A. That is right.

Q. Do you know W. A. Sheppard?

A. Yes.

Q. Who is he?

A. He is a district manager for the Idaho Refining Company.

Q. Do you mean the Idaho Refining Company, or the Idaho Gas & Oil Company?

A. The Idaho Refining Company.

Q. Was it the Idaho Refining Company you worked for, or the Idaho Gas & Oil Company?

A. Idaho Gas & Oil Company.

Q. But you say that Mr. Sheppard was a district manager of the Idaho Refining Company?

Mr. Merrill: We object to that on the grounds that it is repetitious and has been answered.

Trial Examiner Riemer: Overruled. Read the question.

(Testimony of Roy Williams.)

(Last question read aloud by the reporter as hereinabove recorded.)

Q. (Mr. Penfield, continuing) What is your answer?

Mr. Moyle: That is, if he knows.

A. I thought Mr. Sheppard was district manager for the Idaho Refinery Company. I am not sure. [411]

Q. (Mr. Penfield, continuing) How many employees were there at Boise? What was there at Boise? You testified that there was a warehouse that you worked in? A. Yes.

Q. What else was there?

A. There were three employees—there were four, including the bookkeeper.

Q. What did these four employees do?

A. Deliverymen.

Q. Doing the same sort of work that you did?

A. Yes.

Q. And there was one bookkeeper?

A. Yes.

Q. Do you know whether all of these employees were on the payroll of the Idaho Gas & Oil Company?

A. Yes, they were.

Q. Did Mr. Sheppard supervise your work?

A. Yes, sir.

Q. Did he hire these employees?

A. Yes, he did.

(Testimony of Roy Williams.)

Q. Did he hire you? A. No.

Q. Who hired you?

A. Mr. Moyle.

Trial Examiner Riemer: Gilbert Moyle. [412]

Q. (Mr. Penfield, continuing) Was that Gilbert Moyle?

A. Gilbert Moyle.

Q. What was the date that you were first employed by the Idaho Gas & Oil Company?

A. July 1, 1938.

Q. What date did you cease your employment?

A. May 22, 1942.

Q. Do you recall any conversation with Mr. Sheppard in November, 1941? A. Yes.

Q. What conversation do you recall, and when did it occur?

Mr. Merrill: I object to that question on the ground that it is incompetent for any purpose. The Idaho Gas & Oil Company is not a party to this, and I think that it has been definitely proved here that it is now owned by the Idaho Refining Company but by independent and individual stockholders entirely.

Trial Examiner Riemer: The objection is overruled. In the Examiner's opinion, there is a sufficient community of interest between the Idaho Gas & Oil Company and the respondent to bring the Idaho Gas & Oil Company within the provision of the Act. Read the question.

(Testimony of Roy Williams.)

(Last question read aloud by the reporter as hereinabove recorded.)

A. November 13.

Q. (Mr. Penfield) What was this conversation? [413]

A. Mr. Sheppard called me at my home.

Q. On the telephone?

A. Yes, sir, and wanted to know if I knew where he could hire truckdrivers.

Q. And what did you tell him?

A. I told him that I didn't know

Q. What did he mean—hire truckdrivers?

Mr. Merrill: I object to that on the ground that it calls for the conclusion of this witness as to what another man meant.

Trial Examiner Riemer: Sustained.

Mr. Penfield: I will reframe the question.

Q. (Mr. Penfield, continuing) Did he say where these drivers were to work?

A. Pocatello.

Q. Did he say when they were to go to work?

A. The next morning.

Q. Following your telephone conversation, did you have any further conversation with Mr. Sheppard?

A. Yes, sir.

Q. When did that take place?

A. On the 16th—no, the next one was on the 14th

Q. Where did that take place?

A. At the office.

Q. That is at the office of the Idaho Gas & Oil Company? [414]

(Testimony of Roy Williams.)

A. Yes.

Q. What did Mr. Sheppard tell you at that time?

A. He just told me that they wanted some drivers to send to Pocatello to go to work driving.

Q. Is that all he said? A. Yes.

Q. Did you have any further conversation with Mr. Sheppard?

A. Yes, two or three days later, possibly the 16th—it was on the 16th—Mr. Sheppard came out to my house.

Q. That was in Boise?

A. Yes.

Q. What occurred during this meeting?

A. Mr. Sheppard wanted to know if Ray Pittman, Mervin Zollman had joined the union.

Q. Who are Ray Pittman and Mervin Zollman?

A. They were the two delivery men other than myself.

Q. That is delivery men in the Idaho Gas & Oil Company?

A. Yes.

Trial Examiner Riemer: What union is this, please?

The Witness: I imagine it was the Teamsters Union.

Q. (Mr. Penfield, continuing) Did he mention specifically any union?

A. No, he didn't.

Q. What did you tell him?

(Testimony of Roy Williams.)

A. I told him that I didn't know. [415]

Q. Did you have any other or further discussion with him?

A. Well, he wanted me to ask him if they had.

Q. What did you tell him?

A. I turned him down and told him "no".

Q. Did he give any reason for speaking to you?

A. Well, the reason he gave to me, I guess——

Mr. Moyle: We object to his guessing.

Trial Examiner Riemer: Sustained.

Q. (Mr. Penfield, continuing) State what he said.

A. He stated that the reason that he came to me was because he didn't think that I would join the union.

Q. Did he say anything further with respect to Pittman and Zollman?

A. Yes, he did.

Q. What did he say?

A. He said that if Mervin Zollman and Ray Pittman had joined the union, he would have to let them go, and Mervin Zollman had had an accident, a wreck with a truck and run into a horse, and Ray Pittman had run over some gasoline, and made several other mistakes, and he was going to use that as an excuse.

Q. Is that all the conversation that you had with Mr. Sheppard on that occasion?

A. Yes.

Mr. Penfield: No further questions.

(Testimony of Roy Williams.)

Cross Examination [416]

Q. (Mr. Merrill) When did you leave the employment of the Idaho Gas & Oil Company?

A. May 22, 1942.

Q. Was there any particular reason for your leaving? A. Yes.

Q. Were you discharged? A. No.

Q. You sought a job elsewhere?

A. That was one reason.

Q. How long had you been working for the company?

A. Since July 1, 1938.

Q. Did you have difference with Mr. Sheppard?

A. Yes.

Q. That was your other reason for leaving?

A. Yes.

Q. Was there some feeling between you and Mr. Sheppard?

A. Well, I just couldn't get along with him.

Q. There is some feeling now between you and Mr. Sheppard? A. No.

Q. But you don't like him? A. No.

Q. And that was your principal reason then for leaving?

(Testimony of Roy Williams.)

A. No, not necessarily.

Q. Were you a member of the union yourself?

A. No, sir. [417]

Q. Are you now? A. No, sir.

Q. Now, you say that it was on the 13th——

A. Yes, sir.

Q. ——that you were called by Mr. Sheppard, and he asked if you knew where he could get some employees for truckdriving? A. Yes.

Q. Did he tell you then that he wanted them in Pocatello? A. Yes.

Q. You are sure of that date of November 13?

A. I am almost sure.

Q. 1941? A. That is right.

Q. Could it have been the 14th?

A. No, he called me—I talked to him the morning of the 14th at the office.

Q. How do you fix that date?

A. Well, it was on a Thursday that he called me on the 13th.

Q. How do you fix the date? Do you have any outside way of fixing that date?

A. That is the day that the boys was dismissed.

Q. What day was that?

A. On the 14th, they were dismissed, but he told me—

Q. How do you know—who told you that?

A. Mr. Sheppard. [418]

(Testimony of Roy Williams.)

Q. When? A. On the 14th.

Q. But he called you previously on the 13th?

A. Yes, sir.

Q. What time of day?

A. About eight o'clock in the evening, or it was in the evening; I wouldn't say that it was eight o'clock. It was in the evening.

Q. Did you ask why he wanted drivers for Pocatello?

A. No, sir; I didn't.

Q. That didn't occur to you? A. No.

Q. Were you interested in that at all?

A. No.

Q. Did you have anything to do with the drivers?

A. No, sir.

Q. Was there any particular reason why he should call you about drivers?

A. The only reason is possibly because he thought I would know about some drivers.

Q. And you didn't know of any?

A. No.

Q. And you are certain that that was on November 13? A. Yes.

Q. You say it was on November 14 that you went down to the [419] office?

A. Yes.

Q. Did you have any particular reason for going into the office that day?

A. Yes, sir.

(Testimony of Roy Williams.)

Q. What was it?

A. To see which orders were to be delivered.

Q. Did you ask Sheppard then why he called you?

A. No, sir.

Q. He volunteered the information again?

A. Yes, sir.

Q. And said that they wanted men to go toocatello?

A. Yes.

Q. He told you did he not that they wanted good men?

A. He told me that they wanted truckdrivers.

Q. Did he tell you anything about competency, did he say anything about that?

A. No, sir.

Q. At any of these periods, did he say anything to you about competent drivers?

A. No, sir.

Q. Just mentioned truckdrivers?

A. Just truckdrivers.

Q. You say that Sheppard never mentioned any particular union when you say that he asked if Pittman and Zollman belonged [420] to a union?

A. No, sir, he did not.

Q. And you told him that you didn't know whether they did or not?

A. That is right.

Q. Did you belong to the Idaho Refining Company Employees Benefit & Labor Association?

A. No, sir; I did not.

(Testimony of Roy Williams.)

Q. Have you ever belonged to it?

A. No, sir.

Q. But you worked all that period of time without belonging to it?

A. Yes, sir.

Q. You never have asked to join, I suppose?

A. No.

Q. Nor made any application?

A. No.

Q. Who were Pittman and Zollman?

A. They were two deliverymen at the Boise bulk plant.

Q. Do you know whether or not they belonged to this employees union or association?

A. What was the question?

Q. Do you know whether they belonged to this Employees Labor Association?

A. They did not. [421]

Q. And you never asked them whether they belonged to any union or not? A. No, I didn't.

Q. Now, Sheppard didn't purport to tell you that he was doing other than inquiring on his own behalf, did he?

A. What was that question again?

Mr. Merrill: Read the question, please.

(Last question read by reporter.)

A. No, he didn't.

Mr. Merrill: I think that is all.

(Testimony of Roy Williams.)

Redirect Examination

By Mr. Penfield:

Q. Mr. Williams, do you know for sure whether or not Pittman and Zollman belonged to the Idaho Refining Company Employees Benefit and Labor Association? A. No, they don't.

Q. Do you know that they don't? A. Yes.

Mr. Penfield: That is all.

Trial Examiner Riemer: You are excused.
Thank you.

(Witness excused.)

Mr. Leicht: We will call James Ayers.

JAMES AYERS

was thereupon called as a witness by and on behalf of the Board, and being first duly sworn, was examined and testified as follows: [422]

Trial Examiner Riemer: State your full name, please.

The Witness: James Ayers.

Trial Examiner Riemer: Where do you live?

The Witness: Pocatello.

Trial Examiner Riemer: Would you speak as loudly as you can, please?

The Witness: Yes.

(Testimony of James Ayers.)

Direct Examination

By Mr. Leicht:

Q. Where are you employed at the present time, Mr. Ayers?

A. The Naval Gunnery Relining plant for the Morrison-Knudsen Company.

Q. Did you ever work for the Idaho Refining Company? A. Yes, sir.

Q. In what capacity? A. Truck driver.

Q. When were you first employed out at the Idaho Refining Company?

A. The 7th day of September, 1938.

Q. And were you employed at that time as a truckdriver? A. Yes, sir.

Q. Had you had experience as a truckdriver before that? A. Yes, sir.

Q. What was your experience?

A. Well, I drove for the United Companies for about 13 months [423] before, and I drove construction trucks around the country and for different construction companies.

Q. Have you ever done any other kind of work except truckdriving? A. Yes.

Q. But your experience was largely as a truckdriver, is that correct? A. Yes.

Q. How long did you work for the Idaho Refining Company?

A. September in 1938 to November in 1941.

Q. What day in November? A. The 14th.

Q. Did you ever receive a notice of separation and disqualification such as I hold in my hand?

(Testimony of James Ayers.)

A. Yes, sir.

Q. Does that show the last day worked was on November 14, 1941? A. Yes, sir.

Q. Did you do any work on November 14, 1941 at all? A. No, sir.

Q. What has your employment been since November 14, 1941?

A. Well, I drove a Union Pacific bus from the 19th of December——

Mr. Moyle: Doesn't this come under the ban, Mr. Examiner?

Trial Examiner Riemer: I don't think so. [424]

Mr. Leicht: I am not inquiring into the earnings.

Trial Examiner Riemer: Off the record.

(Discussion off the record.)

Trial Examiner Riemer: On the record. Read the last question, please.

(Last question read by the reporter.)

A. Until about the 15th of March and we were laid off then due to the fact that there was not enough business for the extra board drivers.

Q. Since then, you have been employed at the gun plant? A. Yes.

Q. During the time that you worked for the Idaho Refining Company, did you ever have any accidents? A. None whatever.

Q. Were you a member of the Idaho Refining Company Employees Benefit and Labor Association? A. Yes, sir.

(Testimony of James Ayers.)

Q. Do you know whether any of the other truck-drivers were members?

A. Well, I think that most of them were, yes.

Q. Did you ever hold any office or serve on any of the committees of that organization?

A. I believe that I was on the grievance committee once. I don't know what date it was,—what term that was. [425]

Q. When you came to work for the company, were you a member of any labor organization?

A. No, sir.

Q. Did you become a member of any labor organization while you were employed there, other than the Association?

A. Yes, sir; I became a member of the Teamsters Union, I believe it was in October.

Q. I show you Board's Exhibit Numbered 5-A, and ask you whether that is your signature on the application blank? [429]

A. Yes, sir.

Q. And will you tell us just what that is?

A. Well, it is an application for membership in the International Brotherhood of Teamsters.

Q. There apparently is no date on that application, is there?

A. No, sir.

Q. Can you tell us about what date you signed this application?

A. Well, as I recall it, it was pretty well to the first of October when we made our application, and we paid part of our initiation fees at the time and it was about the latter part of October when we finished paying up our initiation.

(Testimony of James Ayers.)

Mr. Moyle: May we inquire to whom he refers by the pronoun "we"?

Trial Examiner Riemer: The witness testified the latter part of October when "we" finished paying up, or words to that effect. What do you mean by the use of the word "we"?

The Witness: Well, about 21 truckdrivers.

Q. (Mr. Leicht, continuing): Truckdrivers of what company?

A. Of the Idaho Refining Company.

Q. Do you recall where you signed that application?

A. Yes, sir; in the American Federation of Labor Hall, South Main Street, Pocatello.

Q. Do you know whether any of the other truckdrivers joined the Teamsters Union that you did at that time? [430]

A. Yes, sir.

Q. At the same time, or approximately the same time, was it?

A. Yes, sir.

Q. Do you recall how many of the Idaho Refining Company truckdrivers had joined by November 1, of 1941?

A. Well, I think about 18 of them.

Q. Do you know how many joined altogether?

A. Well, I believe that it was 21.

Q. Did all the truckdrivers join?

A. No, they did not.

Q. How many did not?

A. Well, there was one that wasn't asked to join.

Trial Examiner Riemer: Who was that, Mr. Witness, please?

(Testimony of James Ayers.)

turned tomorrow and obtain the records. Proceed, Mr. Leicht.

Q. (Mr. Leicht, continuing): At the time that you had this discussion with Mr. Rice on November 13, there had been no agreement presented to the company that you know of, had there?

A. No, there hadn't.

Q. Now, what occurred on November 14?

A. Well, about 9:00 o'clock in the morning, Mr. Rice called me up and wanted me to come out to the plant. He told me that he wanted to talk to me. I went out there and he told me that the insurance had been cancelled on the trucks, and he was going to have to get a new bunch of truck-drivers, and I said if that was the case, he would have to get them, that was all.

Q. Did you get your check that same day?

A. I got a check about a quarter to twelve that same day.

Q. When was your regular pay day? [434]

A. On the 5 and 20th of every month.

Q. Now, while you were working for the Idaho Refining Company, did anyone in authority there ever criticize your work?

A. Oh, it is natural to be criticized once in a while, yes.

Q. Anything serious?

Mr. Merrill: Well, that calls for a conclusion.

Trial Examiner Riemer: Sustained. Find out about what and why he was criticized.

(Testimony of James Ayers.)

Q. (Mr. Leicht, continuing): If there was criticism, what was it about?

A. Well, I think that the only thing was about making a little bit too good a time from Pocatello to Burley and back on one trip.

Q. When was that?

A. About two years ago this spring. [435]

Cross Examination

By Mr. Moyle:

Q. Now, Mr. Ayers, you say that you never heard of the cancellation of a policy. You did hear from time to time, criticism offered by the insurance carrier?

A. Yes, I did.

Trial Examiner Riemer: Excuse me. Will you please read me that question and answer?

(Thereupon the last question and answer were read aloud by the reporter as hereinabove recorded.)

Q. (Mr. Moyle): And you were from time to time told that the record of losses was such that if it continued the policies would be cancelled?

A. No, sir.

Q. When you heard what you did hear, what did you hear?

A. Well, I believe at one of the meetings of the truckdrivers in 1939, Mr. Webb and Mr. Rice were talking about getting Merit Awards for the drivers and they were talking about wrecks. I think that he had one wreck about that time. I am not positive, but I think they were talking about getting a

(Testimony of James Ayers.)

merit system and giving out safety awards for drivers.

Q. Well, now, that had nothing to do with any insurance carrier. Is that the only time that anything was said about safety?

A. Well, as I recall it, it is. [437]

Q. Now, as a matter of fact, from the time that you refer to, when Mr. Webb impressed upon you the importance of establishing a better record, either by a merit system or some other system, as early as that, he told you that we would have to be careful to prevent the cancellation of our insurance, did he not?

A. Yes, sir.

Q. From time to time, after that, there were meetings held with the drivers at which this same subject was discussed?

A. Well, there was probably one or two meetings that was brought up about. There was some meetings that they had that I was unable to attend.

Q. Yes, but you either attended or knew that there were two or three other meetings held?

A. Yes, sir.

Q. At which the question of the insurance carrier and of our losses was discussed?

A. Well, I wouldn't swear to that. If I had heard it, it would be hearsay.

Q. Well, I say that came to your knowledge, hearsay or otherwise?

A. Yes, hearsay. [438]

Q. Now, at that meeting, the question of the cancellation of the insurance was discussed by Mr. Moyle, was it not?

(Testimony of James Ayers.)

A. Not to my knowledge or recollection, it wasn't.

Q. Were you there during all of the meetings?

A. Yes.

Q. Didn't you hear Mr. Moyle say to you that the carriers were then threatening to cancel our insurance?

A. I don't remember.

Q. If we had any other serious losses?

A. I don't remember.

Q. You wouldn't say that he didn't make that report at that meeting? [440]

A. No, sir.

Q. And he pleaded with you at that meeting to be as careful as you could as drivers of the company?

A. Well, he said something about being a little more careful, yes.

Q. You said on your direct examination that he told you that you were a pretty good bunch of drivers?

A. Yes.

Q. At the same time, however, he told you that it would be necessary to be more careful, didn't he?

A. Yes.

Q. And that the losses we had sustained, that is, the insurance company had sustained, were such that if they continued, the insurance would be cancelled?

A. I don't recall him saying that, no.

Q. But you left that meeting and you continued to work with that in mind, did you not?

A. Yes, sir.

(Testimony of James Ayers.)

Q. Knowing that was the situation?

A. Well, I knew——

Q. From what had transpired, you knew that?

A. I knew that the insurance company could cancel the policy all right. [441]

Q. (Mr. Moyle, continuing): You knew, generally speaking, of the losses that had been suffered by the company in its insurance carrier?

A. Yes, sir.

Q. And you knew that from time to time, when these losses arose and occurred, that there was discussion between the management and the employees, with reference to the threat of a cancellation of these policies?

A. The only time that I can be sure of that is the talk with [443] Mr. Webb.

Q. Then again in October you recall another occasion when the drivers either collectively or individually were notified that a letter had been received by the management threatening to cancel the policy upon the occurrence of the next major accident?

A. No, sir.

Q. That was never called to your attention?

A. If it was, it was by hearsay from somebody else, some other source other than the officers of the company.

Q. You did hear that from some other source?

A. Some other source, yes.

Q. So word had been passed around, then to you from the management to the other drivers and by them to you, that such a letter had been received?

(Testimony of James Ayers.)

A. Well, I don't believe that the management told the drivers nor anybody else about it.

Q. Whether the management told them that or not, they did tell you?

A. In a roundabout way, yes.

Q. And at the time that you joined the local union, 440, you knew that such a threat by the insurance companies had been made to the company, in this roundabout way? A. Yes.

Q. Now, after that, and in the early part of November, there [444] was another major accident, wasn't there? A. Of what year?

Q. 1941. A. Prior to November?

Q. I say, the first part of November.

A. Yes, I believe there was.

Trial Examiner Riemer: What was that accident?

Mr. Moyle: Well, we will go into the details of it, unless you may prefer to have us do it now.

Trial Examiner Riemer: Well, I want you to do it now and then you can do it again if you wish. Off the record.

(Discussion off the record.)

Trial Examiner Riemer: On the record.

Q. (Mr. Moyle, continuing): Well, what do you know about that major accident while you were still employed?

A. Well, the only thing that I know is where it happened.

Q. Where did it happen?

(Testimony of James Ayers.)

Q. Was Kenneth Brower discharged on November 14? A. I believe he was.

Q. And he was working for the Refining Company at that time, wasn't he? A. Yes, sir.

Q. Isn't he one of the complainants in this case, do you know?

A. I don't think that he is, no.

Trial Examiner Riemer: Can you tell me, Mr. Leicht, if K. C. Brower, is the Kenneth Brower this witness has been talking about?

Mr. Penfield: That is correct. [462]

Trial Examiner Riemer: It is the same?

Mr. Penfield: Yes. [463]

Q. Now, on November 14, 1941, which was a Friday, Mr. Rice telephoned you, is that correct?

A. On the 13th?

Q. The 14th. A. The 14th, yes, sir.

Q. What time did he telephone you?

A. Well, to my best recollection, about 9:30.

Q. What did he tell you?

A. He told me to come out to the refinery, that he wanted to talk to me.

Q. Did he say anything else over the telephone?

A. No, sir.

Q. Do you know if he telephoned anybody else?

A. Well, only the drivers that told me that he did.

Q. When you got to the refinery, were there any other drivers there?

A. I believe Kenneth Brower was there, and Myron Whitesides. [465]

(Testimony of James Ayers.)

Q. Those three—that would include yourself?

A. Yes.

Q. Did Mr. Rice then speak to you?

A. Yes, sir.

Q. Were Brower and Whitesides present?

A. Oh, I think that they were possibly 50 or 75 feet away.

Q. What did Rice say to you?

A. Well, he said that he had some bad news for us, that the insurance had been cancelled on the trucks, and that he had to lay all of us off and get a new bunch of drivers. [466]

Recross Examination

By Mr. Moyle:

Q. Do you recall an incident when you and Hank Henderson were stopped by Kermit Rice for going too fast?

A. I believe that we were stopped out by the airport one night, but I don't think that we were going too fast, due to the fact that it is uphill, all the way.

Q. He told you that you were going too fast?

A. No, I think that he told us, he asked Mr. Henderson if he was pushing the truck I was driving with the one he had. He had a big truck and I had a small one, and he asked Henderson if he was pushing uphill.

Q. He told you to separate and go slower?

A. He didn't say anything about going slower.

Q. You remember that he told you to separate?

